[redacted]

Supreme Court of the United States

[redacted]

No. 364

[redacted]

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[redacted]

Supreme Court of the United States

.....TERM, ...

No. .....

SEVERINO ALBERTO, Petitioner

VERSUS

BONIFACIO NICOLAS, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

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G. R. No. 28275

United States of America

Philippine Islands

In the Supreme Court of the Philippine Islands

(Action of quo warranto)

BONIFACIO NICOLAS, Plaintiff

VERSUS

SEVERINO ALBERTO, Defendant

ORIGINAL JURISDICTION

Be it remembered that, on the dates hereinafter respectively mentioned, the following proceedings were had in the above-entitled case:

On August 24, 1927, the plaintiff by its counsel filed in the office of the clerk of the Supreme Court of the Philippine Islands a complaint for quo warranto which reads as follows:

(CAPTION AND TITLE OMITTED)

Comes now plaintiff in the above-entitled case, by his undersigned attorneys, and for cause of action against defendant, respectfully avers:

I

Plaintiff is the lawful justice of the peace of the municipality of Angat, Bulacan, having been appointed on February 9, 1920, by the Governor-General by and with the advise and

consent of the Philippine Senate; having taken the oath of, and qualified for, the office on February 14, 1920; and having taken possession of, and exercised, the office from and since that time;

II

On July 2, 1927, his Excellency, the Governor-General, acting under the proviso of section 206 of the Administrative Code, but without the confirmation of the Philippine Senate, transferred plaintiff to the office of justice of the peace of the municipality of San Jose del Monte, Bulacan (copy of His Excellency's letter, marked Exhibit A, is hereunto annexed); and on the same date defendant, justice of the peace of San Jose del Monte, Bulacan, likewise without the confirmation of the Philippine Senate, was also transferred by His Excellency to the office of justice of the peace of Angat, Bulacan;

III

Section 206 of the Administrative Code provides:

> *Tenure of office—transfer from one municipality to another.*—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another.

IV

Plaintiff duly protested against the transfer, and petitioned His Excellency, the Governor-General, to reconsider it. On August 9, 1927, the judge of the Court of First Instance of Bulacan ordered plaintiff to immediately proceed to San Jose del Monte, and to occupy the office of justice of the peace there, on the ground that plaintiff's petition for reconsideration had been denied by His Excellency (copy of his honor's letter, marked Exhibit B, is hereunto annexed; plaintiff never received the Governor-General's communication); similarly, defendant was ordered to immediately proceed to Angat, and to assume the office of justice of the peace therein;

V

Informed, and believing that he is, among others, a victim of political machinations, plaintiff on August 15, 1927, again petitioned His Excellency, the Governor-General, to reconsider his transfer (copy of plaintiff's letter, marked Exhibit C, is hereto annexed); and plaintiff, on the same date, forwarded a copy of said petition to the judge of the Court of First Instance of Bulacan, and requested his honor to await His Excellency, the Governor-General's decision (copy of plaintiff's letter, marked Exhibit D, is here also annexed);

VI

The following day (August 16, 1927) his honor, the judge of the Court of First Instance of Bulacan, after acknowledging receipt of plaintiff's letter, insisted on the immediate compliance of his honor's order of August 9, 1927 (as set forth in paragraph IV), on the ground that said order was in accordance with the instructions of the Honorable, the Secretary of Justice (copy of his honor's letter, marked Exhibit E, is hereto annexed); and on the following day (August 17, 1927), defendant, likewise, was ordered by his honor to immediately take possession of the office of justice of the peace of Angat;

VII

On August 17, 1927, defendant usurped, intruded into, and unlawfully exercised the office of justice of the peace of Angat; and on August 19, 1927, having been threatened, on August 18, with suspension for six months by his honor, the judge of first Instance of Bulacan, plaintiff, protesting and against his will, delivered the docket, books, and papers of his court to defendant herein. (Copy of his honor's order, through the chief of police of Angat, marked Exhibit F, requiring plaintiff's presence before his court on August 18, 1927, at 9 o'clock a. m. is hereunto attached; and copy of plaintiff's protest, marked Exhibit G, against the delivery of the docket, papers, and books of his court, is hereunto also annexed);

VIII

From and since August 17, 1927, defendant has usurped and still usurps, has unlawfully exercised and still unlawfully exercises, the office of justice of the peace of the municipality of Angat, Bulacan, which lawfully belongs to plaintiff herein, excluding plaintiff therefrom; and unless ousted by this Honorable Court, defendant will continue to usurp, intrude into, and unlawfully exercise said office, and exclude therefrom plaintiff herein;

IX

Under the proviso of section 206 of the Administrative Code, His Excellency, the Governor-General, has no power to transfer plaintiff, duly appointed and qualified justice of the peace of Angat, to the municipality of San Jose del Monte, without confirmation by the Philippine Senate; and even then, without plaintiff's consent;

X

The transfer of defendant, justice of the peace of San Jose del Monte, to the municipality of Angat, without the confirmation of the Philippine Senate, is an absolute nullity, because repugnant to the Organic Law; hence, said defendant is occupying the office of justice of the peace of Angat, without authority of law;

Wherefore, plaintiff prays that judgment be rendered, in favor of plaintiff, and against defendant, holding:

A. That plaintiff is lawfully entitled to the office of the justice of the peace of the municipality of Angat, Bulacan;

B. That defendant; to wit, Severino Alberto, is not entitled to said office; and that said defendant be ousted and excluded therefrom, and perpetually enjoined from exercising said office.

Manila, P. I., August 23, 1927.

ARANETA & ZARAGOZA

By (Sgd.) F. CAPISTRANO

Attorneys for Plaintiff

28 Juan Luna, Manila

I, Bonifacio Nicolas, justice of the peace of Angat, Bulacan, upon being duly sworn depose and say: that I am the plaintiff in the above-entitled case; that I have read the foregoing allegations; and that they are true according to the best of my knowledge and belief.

(Sgd.) BONIFACIO NICOLAS

Subscribed and sworn to before me, in the City of Manila, Philippine Islands, this 23d day of August, 1927, deponent having exhibited to me his cedula certificate No. F–1951694, issued at Norzagaray, Bulacan, on the 11th day of January, 1927.

(Sgd.) RAFAEL A. DINGLASAN
Notary Public
Until December 31, 1928.

Doc. No. 33
Page No. 11
Book No. I
Series of 1927

Exhibit A

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

MANILA, *July 2, 1927*

SIR: Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice, you are hereby transferred from the position of justice of the peace for the municipality of Angat, Province of Bulacan, to the same position in the municipality of San Jose del Monte, same province.

Very respectfully,

(Sgd.) E. A. GILMORE
Acting Governor-General

Mr. BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan
(Through the Honorable, the Secretary of Justice, Manila)

Exhibit B

COURT OF FIRST INSTANCE
PROVINCE OF BULACAN
MALOLOS, P. I.

August 9, 1927

Mr. BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan

SIR: Your petition directed to His Excellency, the Governor-General, praying for the reconsideration of the order transferring you to the municipality of San Jose del Monte, Bulacan, having been denied, you are therefore hereby directed to proceed immediately to your new station at San Jose del Monte, Bulacan.

You are requested to inform the undersigned of the date of your departure from Angat and that of your arrival at your new station in San Jose del Monte.

Respectfully,

(Sgd.) ANASTACIO R. TEODORO
Judge, Seventh Judicial District

Received August 12, 1927, 12.30 p. m.

Exhibit C

JUSTICE OF THE PEACE COURT
ANGAT, BULACAN

August 15, 1927

His Excellency, the GOVERNOR-GENERAL
Through the Honorable, the Secretary of Justice
Manila, P. I.

YOUR EXCELLENCY: On August 12, 1927, undersigned, justice of the peace of Angat, Bulacan, received a communication from Judge Teodoro ordering him to immediately proceed to San Jose, on the ground that undersigned's petition for reconsideration of Your Excellency's order transferring him to San Jose had been disapproved.

Without awaiting receipt of Your Excellency's ruling denying said petition, undersigned hereby again respectfully prays Your Excellency to reconsider your order transferring undersigned to the municipality of San Jose, on the following grounds:

1. Undersigned has been, and is, a victim of political intrigue and machinations of certain dissatisfied elements, personified in the present president, Atilano S. Guzman, of Angat, Bulacan, after undersigned had refused to permit that, under the influence of said persons, his court be converted into an instrumentality for partisan purposes.

(Evidence of this may be found in the administrative complaint presented by President Guzman against undersigned wherein Judge Teodoro himself, exhonerated him.)

2. That to subject justice of the peace courts to the political maneuvers, whims, and caprices of politicians, would seriously undermine the independence of the judiciary, resulting in the demoralization of its cornerstone, which rightly is the immediate repository of the liberties of the people.

3. Undersigned believes that a justice of the peace, notwithstanding the proviso in section 206 of the Administrative Code, having been appointed justice of the peace of a specific municipality (section 203) by and with the advise and consent of the Philippine Senate, cannot be transferred to another municipality, without the confirmation of the Philippine Senate; and even then, said justice of the peace cannot be obliged, against his consent, to accept said transfer. The Insular Auditor, in disapproving the payment of the salary of a justice of the peace transferred to a new municipality under said proviso has ruled that this proviso "was not inserted to give power to appoint justices of the peace to other municipalities or to combined jurisdictions by transfer without further confirmation from the Senate." (Op. Ins. Aud., Aug. 11, 1924.)

4. Even conceding that it authorizes the Governor-General to transfer a justice of the peace to another municipality, said proviso should be interpreted to mean "with the consent of said justice of the peace," for that transfer would amount

to a new appointment; and there is no power in the Philippine Islands which can compel a man to accept an office. (Borromeo *vs.* Mariano, 41 Phil. Rep., 322.) Said transfer without the consent of the justice of the peace concerned, even if intended by the Legislature, would be unconstitutional and void, for the reason that it would nullify the provisions of the fundamental law which vest the appointing power in the Governor-General by and with the advice and consent of the Philippine Senate. Moreover, that would be tantamount to removing a justice of the peace from office, in violation of the procedure prescribed by the law.

Wherefore, undersigned respectfully prays that Your Excellency's order of July 2, 1927, be reconsidered.

Angat, Bulacan, P. I., August 15, 1927.

Respectfully submitted.

(Sgd.) BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan

Exhibit D

JUSTICE OF THE PEACE COURT
ANGAT, BULACAN

August 15, 1927

Judge ANASTACIO TEODORO
Malolos, Bulacan

YOUR HONOR: Herewith, is a copy of the petition I have just sent to the Governor-General, through the Secretary of Justice, praying for the reasons given, that my case be further reconsidered.

It is an open secret that I am a victim of political intrigue, and convinced of the justness of my position, I request Your Honor to await the Governor-General's decision on the matter.

I trust Your Honor will graciously grant me this request.

Yours respectfully,

BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan

Exhibit E

COURT OF FIRST INSTANCE
PROVINCE OF BULACAN
MALOLOS, P. I.

August 16, 1927

Mr. BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan

SIR: I beg to acknowledge receipt of your communication, dated August 15, 1927, and a copy of your letter addressed to His Excellency, the Governor-General, praying for further reconsideration of the order of your transfer. In this connection, I wish to inform you that my communication to you dated August 9th, ordering you to proceed immediately to your new station at San Jose del Monte, was in compliance with the instruction of the Honorable, the Secretary of Justice, after your petition for reconsideration was denied by His Excellency, the Governor-General.

Immediate compliance with my order of the 9th instant, is therefore required.

Respectfully,

(Sgd.) ANASTACIO R. TEODORO
Judge

Exhibit F

THE MUNICIPAL GOVERNMENT OF ANGAT
BULACAN, P. I.
OFFICE OF THE CHIEF OF POLICE
ANGAT, BULACAN

August 17, 1927

To the Honorable Justice of the Peace
Angat, Bulacan

SIR: An order vested upon me by the Honorable Judge Anastacio Teodoro of the Seventh Judicial District, you are hereby requested to appear before him at 9 a. m. August 18, 1927.

Failure to comply herewith will enable you to misbehavior.

(Sgd.) LEO T. LAGMAN
Chief of Police

Notified today, August 17, 1927, 12 a. m.
(Sgd.) BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan

Exhibit G

JUSTICE OF THE PEACE COURT
ANGAT, BULACAN

By order of the Honorable Judge Anastacio R. Teodoro and under protest on the part of the undersigned, on this date, August 19, 1927, I have delivered to Mr. Severino Alberto, who is alleged to have been appointed justice of the peace of Angat and who took possession of said office on the 17th instant, the following:

One (1) docket register of civil cases.
One (1) docket register of criminal cases.
One (1) notarial register book (series of 1925).
One (1) receipt book in blank Nos. 3501–3550 (Nos. 3501–3502 used)
One (1) official seal of the court.

That the protest above mentioned was sent by ordinary mail addressed to Honorable Judge Teodoro.

I delivered:

(Sgd.) BONIFACIO NICOLAS
Justice of the Peace of Angat

I received:

(Sgd.) SEV. ALBERTO
Justice of the Peace of Angat

I also received the records of criminal case No. 1421 composing of six serviceable sheets and the key to the door of the courthouse.

(Sgd.) SEV. ALBERTO
Justice of the Peace

On August 25, 1927, the Supreme Court of the Philippine Islands issued an order of the following tenor:

[CAPTION AND TITLE OMITTED]

Mr. SEVERINO ALBERTO
Justice of the Peace of Angat
Bulacan, P. I.

GREETING: Whereas, this Court on the 25th instant approved a resolution, which is quoted below:

> "Considering the petition for a writ of quo warranto, filed, in case R. G. No. 28275, Bonifacio Nicolas *vs.* Severino Alberto, praying that, after proper proceedings, this court declare (1) that the plaintiff is lawfully entitled to the office of the justice of the peace of the municipality of Angat, Bulacan, and (2) that the defendant is not entitled to said office, and should, therefore, be ousted and excluded therefrom, and perpetually enjoined from exercising said office, it is ordered that the respondent be required to show cause in writing within ten days from notice hereof and from the receipt of copy of said petition, why the writ prayed for should not be issued. Justice Villamor and Johns, voted to dismiss the petition."

Now, therefore, You are hereby ordered to show cause in writing within ten days from the receipt of this summons with the copy of the petition, why the writ prayed for should not be issued.

Given by the Honorable Ramon Avanceña, Chief Justice of the Supreme Court of the Philippine Islands, this 26th day of August of 1927.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

On September 6, 1927, the defendant by its counsel filed in the office of the clerk of the Supreme Court the following return:

(CAPTION AND TITLE OMITTED)

RETURN

Now comes the defendant in the above-entitled proceedings through the undersigned Attorney-General, and for answer to the complaint of the plaintiff, alleges:

I. That he denies each and every allegation contained in said complaint.

II. That for further answer to the complaint of said plaintiff, the defendant alleges and avers:

(a) That for several years prior to July 2, 1927, the plaintiff and the defendant were duly and legally holding the offices of justices of the peace of the municipalities of San Jose del Monte and Angat, Bulacan, respectively.

(b) That on April 1, 1927, a complaint charging the plaintiff with (1) charging excessive fees for the celebration of marriages, (2) active participation in the local politics, (3) irregularity in attendance to office, and (4) subornation of perjury, was filed against said plaintiff by the municipal president of Angat, Bulacan, which complaint was joined by more than 300 male inhabitants of said municipality.

(c) That on May 16, 1927, the charges referred to in the preceding paragraph were investigated by the Judge of First Instance of Bulacan, and said Judge, in his decision in said administrative case, made the following findings:

> "Taking all in all, however, the court as above stated, concludes that the respondent justice of the peace herein has given motives so that the suspicion of the townspeople should be aroused against him in his dealing out of justice in the sense that he is not wholly impartial, and for the foregoing considerations, the court rules to dismiss the charges, but finding that the respondent is in a way morally responsible for the people suspecting of his impartiality and integrity, he is in open court reprimanded to the effect that he must avoid hereafter giving cause for suspicion regarding parti-

sanship and favoring any stated political party in Angat."

Copy of this decision is hereto annexed and made a part of this return as Exhibit A.

(*d*) That in view of the above charges and findings, the Honorable, the Secretary of Justice, for the good of the service, recommended the transfer of the plaintiff to the office of justice of the peace of the municipality of San Jose, Bulacan, and of the defendant to that of the municipality of Angat, Bulacan; and His Excellency, the Governor-General, on July 2, 1927, acting upon said recommendation and also for the good of the service, transferred the defendant to the office of justice of the peace of the municipality of Angat and the plaintiff to that of the municipality of San Jose, Bulacan. Copies of said letters of transfer are hereto annexed and made a part of this return as Exhibits B and C.

(*e*) That the defendant, upon being notified of said transfer, signified his willingness to assume the office of justice of the peace of Angat, Bulacan; but the plaintiff, refused to assume the office of justice of the peace of San Jose, Bulacan, and refused to surrender to the defendant the possession of the former office.

(*f*) That the plaintiff requested the Governor-General to reconsider his transfer to the office of justice of the peace of San Jose, Bulacan, but said request was, upon recommendation of the Secretary of Justice and the Judge of First Instance of Bulacan, for the good of the service, disapproved by the Governor-General. Copies of the recommendation of the Judge of First Instance of Bulacan and of the letter of disapproval of the Governor-General, are hereto annexed and made a part of this return as Exhibits D and E.

(*g*) That notwithstanding the above disapproval of his petition for a reconsideration, the plaintiff refused to surrender the possession of the office of justice of the peace of Angat, Bulacan, to the defendant, until the 19th day of August, 1927, when he surrendered same, under protest, to the defendant. Copy of the record of the fact of surrender of

said office is hereto annexed and made a part of this return as Exhibit F.

(*h*) That on August 19, 1927, the defendant entered upon the discharge of his duties as justice of the peace of Angat, Bulacan, and has ever since said time held and discharged the duties of said office, and does now.

(*i*) That the defendant further avers that any pretended appointment or commission which the plaintiff may now have as justice of the peace of Angat, Bulacan, is without authority of law.

Wherefore, the defendant respectfully prays that the complaint of the plaintiff be dismissed with costs to the plaintiff.

(Sgd.) DELFIN JARANILLA
Attorney-General

MANILA, *September 5, 1927.*

Copy received this 5th day of September, 1927.
ARANETA & ZARAGOZA

By _____
Attorneys for the Plaintiff
28 Juan Luna, Manila

Exhibit A

(CAPTION AND TITLE OMITTED)

DECISION

The concrete charges which were attempted to be established by the complainant, who is the municipal president of Angat, Bulacan, refer to the following points:

(1) Participation in political activity;
(2) Illegal exaction of nonauthorized fees;
(3) Irregularity in the attendance at the office; and
(4) Offer of bribery.

In the opinion of this court the evidence adduced by the complainant does not convincingly substantiate these charges, but after a thoughtful consideration of the facts brought out during the investigation, the court has the impression that

the respondent is suspected by the people of Angat of siding with the Partido Nacionalista which is the opposing party to the Democrata. The respondent was charged by the municipal president when the said respondent as justice of the peace refused to comply with the wishes of the herein complainant to have the cases settled in the way he (the complainant) wanted them. The justice of the peace maintained his full power to dispose of judicial cases according to his best knowledge and belief, disregarding the recommendations of the complainant. This is a very significant fact which clarifies the motives which prompted the complainant to file the charges against the herein respondent.

The fact that the charges have been filed against the respondent only after the justice of the peace had displeased the complaining municipal president in his request that the justice of the peace comply with his recommendations taints with grave suspicion the evidence adduced by the said complainant against the respondent; nevertheless, the court is persuaded that the respondent in his dealings with the public in Angat has aroused their suspicions as to his impartiality. Francisco E. Cruz who as a merchant and as a councilor of the municipality of Angat testified positively to the effect that the respondent did his best to favor the Nacionalista Party which attitude redounded to the disadvantage of the Democrata Party. If it were not for the fact that practically two years have elapsed since the respondent is alleged to have participated in political activities, the evidence adduced by the complainant might merit serious consideration on the part of this court; but in view of the circumstances under which they have been filed the court is forced and compelled to conclude that the justice of the peace is not fully exempted from some responsibility and must be reprimanded for his conduct in not avoiding the least possible cause for suspicion on the part of the people as to his impartiality in the discharge of his official duties.

With respect to the charge regarding illegal exaction, the two persons who are alleged to have been caused to pay fees illegally to the respondent were Gervasia Correa and Marcos

Bantug. Each of these two persons alleged to have paid ₱5 and ₱5.20, respectively, to the respondent for the solemnizing of the marriage ceremony. Their testimony is denied by the respondent, and taking into consideration the fact that Gervasia Correa was a complaining witness in a criminal case in the justice of the peace court in Angat and that the said respondent acquitted the accused whom Gervasia Correa had charged with threat, it is highly presumable that the said Gervasia had kept some rancorous feeling against the justice of the peace for so dismissing her suit. As to Marcos Bantug, he is a staunch supporter of the Democrata Party and as is very evident, the respondent is not in good terms with the leaders of said party in Angat. At any rate, the testimony of these two persons are not worthy of very much credence.

As to the nonregular attendance of the respondent to his office, the court does not find the evidence conclusive. The witnesses for the complainant might not have taken notice of the justice of the peace when he attended his office as, ordinarily, when there are no cases to be tried in the justice of the peace court, he remains in the office only for a short time thus complying constructively with the requirements of the law.

As to the charge of offering bribe, the court finds that this charge is vague and unconvincing. Furthermore, the respondent by his witnesses has refuted it satisfactorily.

Taking all in all, however, the court as above stated concludes that the respondent justice of the peace herein has given motives so that the suspicion of the townspeople should be aroused against him in his dealing out of justice in the sense that he is not wholly impartial, and for the foregoing considerations, the Court rules to dismiss the charges, but finding that the respondent is in a way morally responsible for the people suspecting of his impartiality and integrity, he is in open Court reprimanded to the effect that he must avoid hereafter giving cause for suspicion regarding partisanship and favoring any stated political party in Angat.

The clerk of court is hereby ordered to furnish copy of this ruling to the Secretary of Justice.

So ordered.

Malolos, Bulacan, May 20th, 1927.

(Sgd.) ANASTACIO R. TEODORO
Judge

Exhibit B

MANILA, *July 2, 1926*

SIR: Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice, you are hereby transferred from the position of justice of the peace for the municipality of San Jose del Monte, Province of Bulacan, to the same position in the municipality of Angat, same province.

Very respectfully,

E. A. GILMORE
Acting Governor-General

Mr. SEVERINO ALBERTO
Justice of the Peace, San Jose del Monte, Bulacan.
(Through the Honorable,
The Secretary of Justice, Manila)

Copy for:

The Insular Auditor
The Director of Printing
The Director of Civil Service
The Attorney-General
The Secretary of Justice
The Municipal Treasurer, San Jose del Monte, Bulacan
The Judge of First Instance, Malolos, Bulacan

Exhibit C

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

MANILA, *July 2, 1927*

SIR: Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice, you are hereby transferred from the position of justice of the peace for the municipality of Angat, Province of Bulacan, to the same position in the municipality of San Jose del Monte, same province.

Very respectfully,

(Sgd.) E. A. GILMORE
Acting Governor-General

Mr. BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan
(Through the Honorable,
The Secretary of Justice, Manila)

Exhibit D

COURT OF FIRST INSTANCE
PROVINCE OF BULACAN
MALOLOS, P. I.

2ND INDORSEMENT
July 19, 1927

Respectfully returned to the Honorable, the Secretary of Justice, Manila, with the following comments:

In connection with the recommendation of the undersigned regarding the transfer of the justice of the peace of Angat, Mr. Bonifacio Nicolas, in addition to what I have already stated in my basic communication, I may further say that in the investigation held by me in connection with the charges preferred against him by the incumbent municipal president of Angat, it was proven that the respondent actually sympathized, not to say participated in political activities. I wish to invite the attention of the Secretary to the decision ren-

dered by the undersigned in connection with the said charges. Besides, the reputation of the respondent in Angat is and has been doubted by the community for the reason that he sympathizes with the Nationalista Party, and those who are affiliated with the Democrata Party do not trust him, as they have very strong suspicions that he mostly favors the Nationalistas. Furthermore, I may state in this connection that the respondent Bonifacio Nicolas has made me understand that he wished to be transferred to some other place as he himself realized his embarrassing situation in Angat. His reason against the proposed transfer now is the inconvenience that it would cause him, but I understand that such reason must and should not be given weight and consideration when public interest demands that he be transferred as in this particular case.

(Sgd.) ANASTACIO R. TEODORO
Judge, Seventh Judicial District

Exhibit E

MANILA, *August 30 1927*

SIR: Referring to your communication of the 15th instant, reiterating your previous request for reconsideration of the order of your transfer to San Jose del Monte, Bulacan, I have to state that, inasmuch as your transfer was made for the good of the service, the Governor-General declines to grant your request. It is, therefore, requested that, upon receipt hereof, you turn over the office of justice of the peace of Angat, Bulacan, and all the documents and records thereof to Mr. Severino Alberto who was transferred by the Governor-General from the position of justice of the peace of San Jose del Monte to the same position in the municipality of Angat on June 2, 1927. Upon failure to do so, it will be a sufficient cause for your removal from office.

Please acknowledge receipt of this letter.

By authority of the Governor-General:

C. W. FRANKS
Secretary to the Governor-General

Mr. BONIFACIO NICOLAS
Angat, Bulacan

Exhibit F

JUSTICE OF THE PEACE COURT
ANGAT, BULACAN

By order of the Honorable Judge Anastacio R. Teodoro, and under protest on the part of the undersigned, on this date, August 19, 1927, I have delivered to Mr. Severino Alberto, who is alleged to have been appointed justice of the peace of Angat and who took possession of said office on the 17th instant, the following:

One (1) docket register of civil cases.

One (1) notarial register book (series of 1925).

One (1) receipt book in blank Nos. 3501–3550 (Nos. 3501–3502).

One (1) official seal of the court.

That the protest above mentioned was sent by ordinary mail addressed to Honorable Judge Teodoro.

I delivered:

(Sgd.) BONIFACIO NICOLAS
Justice of the Peace of Angat

I received:

(Sgd.) SEV. ALBERTO
Justice of the Peace of Angat

I also received the records of criminal case No. 1421 composing of six serviceable sheets and the key to the door of the courthouse.

(Sgd.) SEV. ALBERTO
Justice of the Peace

On September 22, 1927, the plaintiff and the defendant by their respective counsel, filed in the office of the Clerk of the Supreme Court the following agreed statement of facts:

(CAPTION AND TITLE OMITTED)

Come now the parties, plaintiff by his undersigned attorneys, and defendant by the undersigned Attorney-General, and to this Honorable Court, respectfully pray that they be permitted to present, for the court's decision in the above-entitled case, the following—

STIPULATION OF FACTS

1. On February 9, 1920, plaintiff was appointed justice of the peace of Angat, Bulacan, by the Governor-General by and with the advice and consent of the Philippine Senate. Plaintiff qualified for, took possession of, and exercised the office on and since February 14, 1920, up to August 19, 1927, when he was forced to surrender its possession to defendant.

2. On February 28, 1918, defendant was appointed justice of the peace of San Jose del Monte, Bulacan, by the Governor-General with the advice and consent of the Philippine Senate. Defendant qualified for, and exercised the office since then up to August 19, 1927, when, pursuant to an order transferring him to the office of justice of the peace of Angat, Bulacan, he exercised, and has since exercised, the latter office.

3. On April 1, 1927, an administrative complaint was filed by the municipal president, Atilano S. Guzman, of Angat, Bulacan, against plaintiff, which complaint was investigated by the Judge of First Instance of Bulacan on May 16, 1927. The court's decision promulgated May 20, 1927 (Exhibit A, defendant's return) is hereto annexed as an integral part of this stipulation.

4. On May 23, 1927, President Guzman, by his attorney, Angel H. Mojica, appealed from the findings of the Court of First Instance of Bulacan, to the Governor-General. This appeal marked Exhibit 1, hereto attached as an integral part of this stipulation, was joined by about three hundred residents of the municipality of Angat, Bulacan.

5. On June 27, 1927, the Governor-General endorsed the appeal to the Secretary of Justice. His Excellency's endorsement, marked Exhibit 2, is hereunto also annexed as an integral part of this stipulation.

6. On July 2, 1927, the Governor-General, without the confirmation of the Philippine Senate, transferred plaintiff from the municipality of Angat to the municipality of San Jose del Monte. On the same date, the Governor-General, likewise without the confirmation of the Philippine Senate, transferred defendant, justice of the peace of San Jose del Monte, to the municipality of Angat. The orders of transfer (Ex-

hibits C and B, defendant's return) are hereto annexed and made an integral part of this stipulation.

7. Plaintiff protested against the transfer, petitioned the Governor-General twice to reconsider it, and has consistently refused to be transferred to San Jose del Monte. Defendant signified his willingness to accept his transfer to the municipality of Angat, and to assume the office of justice of the peace there. Plaintiff's petition for reconsideration (Exhibit C, complaint) is hereunto also annexed and made an integral part of this stipulation.

8. Having been threatened on August 18 with suspension for six months by the Judge of First Instance of Bulacan if he did not comply with the order transferring him to San Jose del Monte, plaintiff, on August 19, 1927, delivered his office including its dockets, books, and papers to the defendant, under protest. Plaintiff's protest against the delivery (Exhibit G, complaint) is hereunto also annexed and made an integral part of this stipulation. On August 30, 1927, the Governor-General denied plaintiff's second petition for reconsideration. Copy of the Governor-General's resolution (Exhibit E, defendant's return) is hereunto also annexed.

9. From and since August 19, 1927, defendant has exercised, and still does exercise, the office of justice of the peace of Angat, excluding plaintiff therefrom.

Manila, P. I., September 22, 1927.

Respectfully submitted.

(Sgd.) DELFIN JARANILLA
Attorney-General for defendant
ARANETA & ZARAGOZA
By (Sgd.) GREGORIO ARANETA
Attorneys for plaintiff
28 Juan Luna, Manila

[CAPTION AND TITLE OMITTED]

DECISION

The concrete charges which were attempted to be established by the complainant, who is the municipal president of Angat, Bulacan, refer to the following points:

(1) Participation in political activity;

(2) Illegal exaction of nonauthorized fees;

(3) Irregularity in the attendance at the office; and
(4) Offer of bribery.

In the opinion of this court the evidence adduced by the complainant does not convincingly substantiate these charges, but after a thoughtful consideration of the facts brought out during the investigation, the court has the impression that the respondent is suspected by the people of Angat of siding with the Partido Nacionalista which is the opposing party to the Democrata. The respondent was charged by the municipal president when the said respondent as justice of the peace refused to comply with the wishes of the herein complainant to have the cases settled in the way he (the complainant) wanted them. The justice of the peace maintained his full power to dispose of judicial cases according to his best knowledge and belief, disregarding the recommendations of the complainant. This is a very significant fact which clarifies the motives which prompted the complainant to file the charges against the herein respondent.

The fact that the charges have been filed against the respondent only after the justice of the peace had displeased the complaining municipal president in his request that the justice of the peace comply with his recommendations taints with grave suspicion the evidence adduced by the said complainant against the respondent; nevertheless, the court is persuaded that the respondent in his dealing with the public in Angat has aroused their suspicions as to his impartiality. Francisco E. Cruz who as a merchant and as a councilor of the municipality of Angat testified positively to the effect that the respondent did his best to favor the Nacionalista Party which attitude redounded to the disadvantage of the Democrata Party. If it were not for the fact that practically two years have elapsed since the respondent is alleged to have participated in political activities, the evidence adduced by the complainant might merit serious consideration on the part of this court; but in view of the circumstances under which they have been filed the court is forced and compelled to conclude that the justice of the peace is not fully exempted from some responsibility and must be reprimanded for his conduct in not avoiding the least possible cause for suspicion on the part of

the people as to his impartiality in the discharge of his official duties.

With respect to the charge regarding illegal exaction, the two persons who are alleged to have been caused to pay fees illegally to the respondent were Gervasia Correa and Marcos Bantug. Each of these two persons alleged to have paid ₱5 and ₱5.20, respectively, to the respondent for the solemnizing of their marriage ceremony. Their testimony is denied by the respondent, and taking into consideration the fact that Gervasia Correa was a complaining witness in a criminal case in the justice of the peace court in Angat and that the said respondent acquitted the accused whom Gervasia Correa had charged with threat, it is highly presumable that the said Gervasia had kept some rancorous feeling against the justice of the peace for so dismissing her suit. As to Marcos Bantug, he is a staunch supporter of the Democrata Party and as is very evident, the respondent is not in good terms with the leaders of said party in Angat. At any rate, the testimony of these two persons are not worthy of very much credence.

As to the nonregular attendance of the respondent to his office, the court does not find the evidence conclusive. The witnesses for the complainant might not have taken notice of the justice of the peace when he attended his office as, ordinarily, when there are no cases to be tried in the justice of the peace court, he remains in the office only for a short time thus complying constructively with the requirements of the law.

As to the charge of offering bribe, the court finds that this charge is vague and unconvincing. Furthermore, the respondent by his witnesses has refuted it satisfactorily.

Taking all in all, however, the court as above stated concludes that the respondent justice of the peace herein has given motives so that the suspicion of the townspeople should be aroused against him in his dealing out of justice in the sense that he is not wholly impartial, and for the foregoing considerations, the court rules to dismiss the charges, but finding that the respondent is in a way morally responsible for the people suspecting of his impartiality and integrity, he is in open court reprimanded to the effect that he must avoid

hereafter giving cause for suspicion regarding partisanship and favoring any stated political party in Angat.

The clerk of court is hereby ordered to furnish copy of this ruling to the Secretary of Justice.

So ordered.

Malolos, Bulacan, May 20, 1927.

(Sgd.) ANASTACIO R. TEODORO
Judge

Exhibit i

31 Plaza Moraga, Manila
May 23, 1927

His Excellency
The GOVERNOR-GENERAL
Manila

SIR: The undersigned attorney, on behalf of the complainant, Atilano S. Guzman, municipal president of Angat, Bulacan, who instituted several charges against the justice of the peace of said municipality, hereby appeals to Your Excellency from the decision of the investigator for the following reasons:

1. That the findings and decision of the said investigator is manifestly against the facts and weight of evidence produced at the hearing of the charges.

2. That the witnesses for the complainant merit greater credibility than those of the respondent.

3. That the decision reprimanding the respondent in open court is incompatible with his exoneration from all charges.

HISTORY OF THE CASE

For some years the respondent justice of the peace of Angat, Bulacan, has been engaged in nefarious activities, taking active part in politics, using his office and influence for the benefit of his followers and administers justice partially. He organized a secret society purported to foster the spirit of comradeship among its members, but its prime purpose is politics to strengthen his hold and power over the masses.

The poor, oppressed people are powerless and they could not dare raise their voice of protest against his iniquity for fear of revenge. Persons who do not belong to his faction are at his mercy and oftentimes victims of whims and caprices.

The grievances of the people reach such a high pitch that they were constrained to bring to the attention of Your Excellency the chain of irregularities he has committed through their authorized leader, the municipal president.

Hence the following charges were instituted, to wit:

1. That he charged excessive fees than that provided for by law in performing marriages and appropriates the excess for his personal benefit.

2. That he is habitually engaged in politics, and took active part in the last general elections in political campaigns.

3. That he does not go to office daily but collects full pay for his absences.

4. That he offered a bribe of ₱100 to Policarpio Pascual in order that the latter may testify falsely against the interest of Mateo de Guzman, a political enemy of the respondent.

ARGUMENT

TOOK ACTIVE PART IN POLITICS

With due respect to the learned opinion and findings of the Honorable Judge who investigated the charges, we hold and maintain that same had been satisfactorily proved as may be seen from the records of the case. Witnesses from all elements of the community were produced at the hearing and they all testified positively that the respondent justice of the peace had been taking active part in politics in the last elections. All the witnesses of the complainant, with the exception of two persons who testified with regard to the political activities of the respondent are his townmates. Their testimony merit greater weight than that of the respondent who simply denied the declarations of said witnesses. It is interesting to note that two of these witnesses, Pedro Punzal and Francisco Sarmiento belong to the party to which the respondent is affiliated and they had been his leaders in Norzagaray, his home town.

Apolonio Ramos is an old man and stated that he had seen the respondent soliciting votes for his candidates in the last general elections of 1925.

No proof whatsoever had been produced to show that Apolonio Ramos and Francisco Sarmiento are his enemies or that they harbor a grudge against him. On the contrary said persons declared that they belong to the same party to which the respondent belongs and that they do not cherish any ill-feeling against him.

In dismissing the charge regarding the political activities of the respondent the investigator based his finding on the theory that if the charge was true, the complaint would have been presented earlier. As already stated the respondent is very influential and powerful that the common people are afraid to come out openly against him. It was only lately when the complainant was able to find civic-spirited persons who were willing to denounce the political activities of said respondent and to this may be accounted the delay in the filing of the charges.

CHARGED EXCESSIVE FEES

That the respondent charged more than that provided for by law for performing marriages (₱1 is the lawful fee) was clearly established by the testimony of two of the victims; namely, Marcos Bantug who was charged by the respondent ₱5 and Gervacia Correa from whom was collected ₱5 aside from ₱1.20 which the best man paid to the said respondent.

DOES NOT GO TO OFFICE REGULARLY

That the respondent does not got to office daily but twice or thrice a week only and collects his full pay for his absences were satisfactorily shown by the testimony of the chief of police, the janitor of the municipality, and an employee by the name of Pedro Bautista. These persons stated that they observe their office hours regularly and that they see the respondent in office twice or thrice a week only since November, 1926 up to April, 1927. The municipal treasurer, however, testified that according to the vouchers the respondent was paid full salary for the months of February and

March, 1927. These witnesses are public officers and employees in the municipality of Angat and they are in a position to see if the respondent had really gone to office daily and regularly since November, 1926 up to April, 1927.

The only proof produced by the respondent at the investigation to show that he was coming to office regularly was the Internal Revenue Stub which shows the transactions he made in office. We submit that the stub is not the best proof that the respondent was reporting to duty daily because the stub does not show that the respondent had had a daily transaction and furthermore the entry could be made outside of his office.

OFFERED TO BRIBE POLICARPIO PASCUAL

That the respondent attempted to bribe Policarpio Pascual in order that the latter may testify against the interest of Mateo de Guzman, a political enemy of the respondent was clearly shown by the affidavit executed by said Policarpio Pascual. The affidavit speaks for itself and its content was not disproved by the respondent nor by his witnesses who contradicted each other on material points.

The learned judge has creditably acquitted himself by trying to please both parties. While the respondent had been acquitted of all the charges yet he was severely and openly reprimanded in court for the suspicion the people of Angat entertained on his partiality in the discharge of his duties. We maintain and so hold that the decision reprimanding the respondent is incompatible with his exoneration.

Why should the respondent be reprimanded if the Honorable Judge was morally and legally convinced that the suspicion of the people of Angat was groundless? Why should the respondent be reprimanded for what the public suspect of him if the investigator believes that he was innocent of the charges imputed to him? Why should the respondent be censured for a mere suspicion of the public?

The truth of the matter is that the respondent had done the acts imputed to him in the complaint and these acts gave rise to what the judge termed "suspicion."

In this connection, it may not be amiss to include the petition, marked "A" of more than six hundred persons of Angat, Bulacan, including women requesting that the respondent

justice of the peace Bonifacio Nicolas, be removed from the service or at least transferred to another municipality. This clearly shows that the people of Angat are not only suspicious of the respondent but against him.

In view of the foregoing, it is respectfully requested:

1. That the findings and decision of the investigator be reversed.

2. That a special investigator be appointed to ascertain the charges.

3. That the respondent be dismissed from the service or in the event the findings of the Honorable Judge is sustained the said respondent be transferred to another municipality.

Respectfully,

(Sgd.) ANGEL H. MOJICA
Attorney for the complainant
31 Plaza Moraga, Manila

ANGAT, BULACAN, *May 23, 1927*

His Excellency,
The GOVERNOR-GENERAL
Manila

SIR: We, the undersigned residing in the municipality of Angat, Bulacan, respectfully submit to your attention the following:

1. That we adhere to the complaint filed by our municipal president against the justice of the peace, Mr. Bonifacio Nicolas, denouncing his political activities which is a matter of common knowledge in this town.

2. That said justice of the peace had sown seeds of dissension and division among the masses and to this may be accounted the frequent troubles in our town.

3. That we have lost our faith in his integrity and impartiality and we believe we could not get justice in his official acts.

Wherefore, we respectfully request that he be dismissed from the service or at least transferred to another municipality.

Respectfully,

(Signed by about 300 persons)

Exhibit 2

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

1ST INDORSEMENT
Manila, June 27, 1927

Respectfully referred to the Honorable, the Secretary of Justice, Manila, with the information that the records of this Office show that the investigation was regular and in order and that the case is closed. However, in view of the friction which exists, His Excellency, the Governor-General, believes it would be advisable to transfer this justice of the peace to another municipality when opportunity arises.

(Sgd.) C. W. FRANKS
Secretary to the Governor-General

Exhibit C, Defendant's Return

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

MANILA, *July 2, 1927*

SIR: Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice, you are hereby transferred from the position of justice of the peace for the municipality of Angat, Province of Bulacan, to the same position in the municipality of San Jose del Monte, same province.

Very respectfully,

(Sgd.) E. A. GILMORE
Acting Governor-General

Mr. BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan
(Through the Honorable,
The Secretary of Justice, Manila)

Exhibit B, Defendant's Return

MANILA, *July 2, 1927*

SIR: Pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice, you are hereby transferred from the position of Justice of the Peace for the municipality of San Jose del Monte, Province of Bulacan, to the same position in the municipality of Angat, same province.

Very respectfully,

(Sgd.) E. A. GILMORE
Acting Governor-General

Mr. SEVERINO ALBERTO
Justice of the Peace
(Through the Honorable,
The Secretary of Justice, Manila)

Copy for:
The Insular Auditor
The Director of Printing
The Director of Civil Service
The Attorney-General
The Secretary of Justice
The Municipal Treasurer, San Jose del Monte, Bulacan
The Judge of First Instance, Malolos, Bulacan

Exhibit C, Complaint

JUSTICE OF THE PEACE COURT
ANGAT, BULACAN

August 15, 1927

His Excellency, the Governor-General
(Through the Honorable,
The Secretary of Justice, Manila, P. I.)

YOUR EXCELLENCY: On August 12, 1927, undersigned, justice of the peace of Angat, Bulacan, received a communication from Judge Teodoro ordering him to immediately proceed to San Jose, on the ground that undersigned's petition for re-

consideration of Your Excellency's order transferring him to San Jose had been disapproved.

Without awaiting receipt of Your Excellency's ruling denying said petition, undersigned hereby again respectfully prays Your Excellency to reconsider your order transferring undersigned to the municipality of San Jose, on the following grounds:

1. Undersigned has been, and is, a victim of political intrigue and machinations of certain dissatisfied elements, personified in the present president, Atilano S. Guzman, of Angat, Bulacan, after undersigned had refused to permit, that under the influence of said persons, his court be converted into an instrumentality for partisan purposes.

(Evidence of this may be found in the administrative complaint presented by President Guzman against undersigned, wherein Judge Teodoro himself, exhonerated him.)

2. That to subject justice of the peace courts to the political maneuvers, whims, and caprices of politicians, would seriously undermine the independence of the judiciary, resulting in the demoralization of its cornerstone, which rightly is the immediate repository of the liberties of the people.

3. Undersigned believes that a justice of the peace, notwithstanding the provision in section 206 of the Administrative Code, having been appointed justice of the peace of a specific municipality (section 203) by and with the advice and consent of the Philippine Senate, cannot be transferred to another municipality, without the confirmation of the Philippine Senate; and even then, said justice of the peace cannot be obliged, against his consent, to accept said transfer. The Insular Auditor, in disapproving the payment of the salary of a justice of the peace transferred to a new municipality under said proviso has ruled that this proviso "was not inserted to give power to appoint justices of the peace to other municipalities or to combined jurisdictions by transfer without further confirmation from the Senate."

4. Even conceding that it authorizes the Governor-General to transfer a justice of the peace to another municipality, said proviso should be interpreted to mean "with the consent of said justice of the peace," for that transfer would amount to a new appointment; and there is no power in the Philippine

Islands which can compel a man to accept an office. (Borromeo *vs.* Mariano, 41 Phil. Rep. 322.) Said transfer without the consent of the justice of the peace concerned, even if intended by the Legislature, would be unconstitutional and void, for the reason that it would nullify the provisions of the fundamental law which vest the appointing power in the Governor-General, by and with the advice and consent of the *Philippine Senate*. Moreover, that would be tantamount to removing a justice of the peace from office, in violation of the procedure prescribed by the law.

Wherefore, undersigned respectfully prays that Your Excellency's order of July 2, 1927, be reconsidered.

Angat, Bulacan, P. I., August 15, 1927.

Respectfully submitted.

(Sgd.) BONIFACIO NICOLAS
Justice of the Peace, Angat, Bulacan

Exhibit G, Complaint

JUSTICE OF THE PEACE COURT, ANGAT, BULACAN

By order of the Honorable Judge Anastacio R. Teodoro, and under protest on the part of the undersigned, on this date, August 19, 1927, I have delivered to Mr. Severino Alberto, who is alleged to have been appointed justice of the peace of Angat and who took possession of said office on the 17th instant the following:

One (1) docket register of civil cases.

One (1) notarial register book (series of 1925).

One (1) receipt book in blank, Nos. 3501–3550 (Nos. 3501–3502 used).

One (1) official seal of the court.

That the protest above mentioned was sent by ordinary mail addressed to Honorable Judge Teodoro.

I delivered:

(Sgd.) BONIFACIO NICOLAS
Justice of the Peace of Angat

I received:

(Sgd.) SEV. ALBERTO
Justice of the Peace of Angat

I also received the records of criminal case No. 1421 composing of six serviceable sheets and the key to the door of the courthouse.

(Sgd.) SEV. ALBERTO
Justice of the Peace

Exhibit E, Defendant's Return

MANILA, *August 30, 1927*

SIR: Referring to your communication of the 15th instant, reiterating your previous request for reconsideration of the order of your transfer to San Jose del Monte, Bulacan, I have to state that, inasmuch as your transfer was made for the good of the service, the Governor-General declines to grant your request. It is, therefore, requested that, upon receipt hereof, you turn over the office of justice of the peace of Angat, Bulacan, and all the documents and records thereof to Mr. Severino Alberto who was transferred by the Governor-General from the position of justice of the peace of San Jose del Monte to the same position in the municipality of Angat on June 2, 1927. Upon failure to do so, it will be a sufficient cause for your removal from office.

Please acknowledge receipt of this letter.

By authority of the Governor-General:

C. W. FRANKS
Secretary to the Governor-General

Mr. BONIFACIO NICOLAS
Angat, Bulacan

On the same date, i. e., September 22, 1927, the plaintiff and the defendant, by their respective counsel, filed in the office of the Clerk of the Supreme Court a motion, which reads as follows:

(CAPTION AND TITLE OMITTED)

MOTION

Come now the undersigned Attorney-General and the undersigned attorneys for the plaintiff, and to this Honorable Court respectfully show:

That on this same date they have filed, for the court's decision in the above-entitled case, an agreed statement of facts;

That in view of the important basic principles involved in this case, ample opportunity should be given both sides for a full exposition of their arguments;

Wherefore, it is respectfully prayed that this case be set for hearing on September 26, 1927, or on any other day this Honorable Court will deem convenient, and that each side be given one hour for oral argument.

Manila, P. I., September 22, 1927.

Respectfully submitted.

ARANETA & ZARAGOZA
By (Sgd.) GREGORIO ARANETA
Attorneys for plaintiff
28 Juan Luna, Manila
(Sgd.) DELFIN JARANILLA
Attorney-General, for the defendant

In a resolution dated September 22, 1927, the Supreme Court of the Philippine Islands granted the foregoing motion.

After hearing argument of both parties the Supreme Court of the Philippine Islands on January 10, 1928, rendered the following decision:

[CAPTION AND TITLE OMITTED]

DECISION

MALCOLM, *J.*:

This is an action of quo warranto originally brought in this Court to determine the respective rights of the plaintiff and the defendant to the office of justice of the peace of Angat, Bulacan. The question at issue is the legal right of the Governor-General to transfer a justice of the peace of one municipality to another municipality, without the advice and consent of the Philippine Senate.

The facts are stipulated. Bonifacio Nicolas, the plaintiff, on February 9, 1920, was appointed justice of the peace of Angat, Bulacan, by the Governor-General, with the advice and

consent of the Philippine Senate. Plaintiff qualified for the office shortly thereafter. He exercised its functions up to August 18, 1927, when he was forced to surrender possession to defendant.

Severino Alberto, the defendant, on February 28, 1918, was appointed justice of the peace of San Jose del Monte, Bulacan, by the Governor-General, with the advice and consent of the Philippine Senate. Defendant qualified for and exercised the functions of the office from the date mentioned to August 19, 1927, when he received an order transferring him to the office of justice of the peace of Angat, Bulacan. Since then, he has acted as justice of the peace of the latter municipality.

It appears further that on April 1,1927, an administrative complaint was filed by the municipal president of Angat, Bulacan, against plaintiff. The charges were duly investigated by the Judge of First Instance of Bulacan. Judge Teodoro decided to dismiss the complaint with a public reprimand so that the justice of the peace might "avoid hereafter giving cause for suspicion regarding partisanship and favoring any stated political party in Angat." The municipal president of Angat and about three hundred sympathizers appealed from this decision to the Governor-General. On receipt of the communication, the Secretary to the Governor-General endorsed the papers to the Secretary of Justice "with the information that the records of this office show that the investigation was regular and in order and that the case is closed. However, in view of the friction which exists, His Excellency, the Governor-General believes it would be advisable to transfer this justice of the peace to another municipality when opportunity arises." Then on July 2, 1927, the Acting Governor-General, without the advice and consent of the Philippine Senate, and purporting to act "pursuant to the provisions of section 206 of the Administrative Code, as amended by Act No. 2768, and upon recommendation of the Honorable, the Secretary of Justice," ordered the transfer of Bonifacio Nicolas "from the position of justice of the peace of the municipality of Angat, Province of Bulacan, to the same position in the municipality of San Jose del Monte, same province." As of equal date, the Acting Governor-General, likewise without the confirmation of the Philippine Senate,

transferred Severino Alberto, justice of the peace of San Jose del Monte, to Angat.

Plaintiff protested against the transfer. He petitioned the Governor-General twice to reconsider it. He has persistently refused to accept designation to San Jose del Monte. On the other hand, the defendant signified his willingness to accept the transfer to Angat and to assume the office of justice of the peace there. Plaintiff only gave up possession of the position of justice of the peace of Angat when peremptorily ordered to do so by the Judge of First Instance of Bulacan. Even then, plaintiff protested against delivering his office to the defendant. The Governor-General has denied the plaintiff's petitions for reconsideration.

The court is not concerned with the merits of the complaints against Bonifacio Nicolas as justice of the peace of Angat, Bulacan. It is sufficient for our purposes to know that the investigation of Bonifacio Nicolas was regular; that the decision dismissed the charges with a reprimand; that the case was considered closed; and that he was not removed from office. Likewise, matters of expediency are out of place. The court should be mindful of no consideration other than an earnest desire to give just application of the law to the admitted facts.

The law provides that "one justice of the peace and one auxiliary justice of the peace shall be appointed by the Governor-General, with the advice and consent of the Philippine Senate for * * * each municipality, * * * in the Philippine Islands * * *" (Administrative Code, section 203; Act No. 3107, section 1.) When a vacancy occurs in the office of any justice of the peace, except in provincial capitals and first class municipalities, the judge of the Court of First Instance of the district forwards to the Governor-General a list of names of persons qualified to fill the vacancy. Thereupon the "Governor-General, with the advice and consent of the Philippine Senate, shall make the respective appointments from said list." (Administrative Code, section 210; Act No. 3107, section 1.) A justice of the peace may, following an investigation by the Judge of First Instance, be reprimanded, or the Judge of First Instance may recommend to the Governor-General his removal from office, or his removal and dis-

qualification from holding office and may suspend him from office pending action by the Governor-General. "The Governor-General may, upon such recommendation or on his own motion, remove from office any justice of the peace or auxiliary justice of the peace." (Administrative Code, section 229.)

It is thus incontestable that an appointment of a justice of the peace is made by the Governor-General, with the advice and consent of the Philippine Senate. A removal of the justice of the peace, on the other hand, is made by the Governor-General, without the advice and consent of the Philippine Senate. Interlocked by these two principles stands section 206 of the Administrative Code which, before amendment, provided: "A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice." Act No. 2768 amended said section 206 of the Administrative Code by adding the proviso "that in case the public interest requires it, a justice of the peace of one municipality may be transferred to another." The proviso was inserted in the law, so it has been said, not to give power to appoint justices of the peace to other municipalities without further confirmation from the Senate, but to assert the right of the Government to transfer justices of the peace from one jurisdiction to another even without their consent. (See Araneta's I, Administrative Code, p. 350.)

Let us notice again the wording of the amended section 206 of the Administrative Code. The body of the section sanctions the holding of office by justices of the peace during good behavior. The proviso qualifies this by providing "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another." At once it is noted that the law is silent as to the office or entity which may make the transfer. The law does not say may be transferred "by the Governor-General." The insertion of the words "by the Philippine Senate" would be as justifiable. The more reasonable inference, indeed the only possible legal inference permissible without violating the constitution, is that the justice of the peace may be transferred by the exercise of the appointing power, and the appointing power con-

aists of the Governor-General acting in conjunction with the Philippine Senate.

That is all there is to the case. Just some conceded facts calling for the application of the law. Logically we should stop here. But we proceed to ascertain the meaning of the proviso to codal section 206 by fitting the proviso into the general scheme of the law.

The justice of the peace is appointed to a specific municipality. The only legal method by which the appointment can be made is by the Governor-General, with the advice and consent of the Philippine Senate. Any other attempted method intended to provide for an appointment through subterfuge or evasion would be in clear violation of organic law. The Organic Act, the Act of Congress of August 29, 1916, in section 21 provides that the Governor-General "shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may not be appointed by the Governor-General, or such as he is authorized by this act to appoint, or whom he may hereafter be authorized by law to appoint." When the Organic Act was approved, section 206 of the Administrative Code, unamended, was on the statute books. It was thus beyond the power of the Philippine Legislature by the enactment of Act No. 2768 or any other Act or of the Governor-General by enforcement or wrong construction to detract from the provisions of law which had been confirmed by the Organic Act.

A justice of the peace is placed in a certain municipality by the Governor-General, with the advice and consent of the Philippine Senate. The justice of the peace in any other municipality receives his office from the same source. They serve during good behavior. The only method by which either of them can be gotten out of their positions is by removal. When a vacancy in the position of justice of the peace of any given municipality occurs, the vacant office can only be filled by appointment, that is, by the Governor-General, with the advice and consent of the Philippine Senate.

The justice of the peace gets in by appointment. He gets out by removal. There is no half-way-in-or-out method. A transfer of a justice of the peace outside of the municipality

to which he was appointed is, in legal effect, a combined removal and appointment. A forced transfer creates a permanent vacancy. One phase in the transfer is tantamount to appointment. The removal does not need the consent of the Senate. The appointment does need that consent. What may not be done directly may not be permitted to be done indirectly.

The previous decisions of this court intended to safeguard the independence of the judiciary should not be departed from without good reason. In the well-known cases of Borromeo *vs.* Mariano (1921) 41 Phil. 322, and Concepcion *vs.* Paredes (1921) 42 Phil. 599, it was announced, as to Judges of First Instance, that they are not appointed Judges of First Instance of the Philippine Islands, but are appointed judges of the Courts of First Instance of the respective judicial districts of the Philippine Islands. They hold these positions of Judges of First Instance of definite districts, it was said, until they either resign, reach the age of retirement, or are removed through impeachment proceedings. That was the doctrine of the majority decisions. But even under the thesis of the learned dissenting opinion in Borromeo *vs.* Mariano, *supra*, it was still sustained that a new appointment by the Governor-General, with the advice and consent of the Philippine Senate, would be necessary to make a valid transfer. Mr. Justice Villamor said: "• • • the executive power to effect transfers of judges is subject to the approval of a restraining body, • • • the Senate • • •. According to law, the Governor-General has the discretion to make transfers of judges • • • with the consent of the Senate." In Concepcion *vs.* Paredes, *supra*, where the attempt to secure a transfer of judges by drawing of lots was thwarted, it was further said that "there can be no valid appointment to an office so long as the appointing power, in this instance the Governor-General and the Philippine Senate, and not the Secretary of Justice, is not exercised. • • • The law before us would require a drawing of lots for judicial positions, while the organic law would require selection for judicial positions by the Governor-General with the assent of the Philippine Senate."

The same doctrine has been used to keep the legislative branch from trespassing on the executive domain. Recent examples come readily to mind. For instance, the Philippine Senate, with power to punish an appointive Senator for disorderly behavior but without power to remove him, sought to get around the law by decreeing a suspension for one year, but this Court in both majority and minority opinions held that the suspension was equivalent to expulsion and could not be sanctioned. (Alejandrino *vs.* Quezon (1924), 45 Phil. 83.)

What we now have to do is to carry forward the same principle and, applying it just as serenely, protect a branch of the Legislature from an absorption of its power by the Chief Executive. Facts change but principles remain immutable.

The Attorney-General endeavors to demonstrate the purpose of the Legislature by citing the legislative history of the bill which later became Act No. 2768. The Attorney-General shows that when the house bill was submitted to the Senate an amendment was approved by inserting the following: "*siempre que su nombramiento, en virtud del traslado, sea confirmado por el Senado.*" Later the amendment was eliminated and the bill approved in its present form. It may, therefore, be that the Legislature had in view, by refusing to accept the amendment, precisely what is now contended for, which is to place the power of transfer in the hands of the Governor-General without legislative restriction. An equally permissible supposition is that the Legislature thought the amendment unnecessary and superfluous because of the plain meaning of the bill without it. The subject is so confused that no help can be derived from this source.

The representatives of the Attorney-General also offer an argument which, we are sure, the law officer of the Government, on further reflection, would not desire to sanction. It is said that "it is not pertinent to claim for the justices of the peace that judicial independence which is often invoked for Judges of First Instance. It is within the judicial knowledge of this Honorable Court that justices of the peace in the Philippine Islands are not equipped with the same mental

and moral qualifications as Judges of First Instance and that their conduct in office in many instances leaves much to be desired." But the mental or moral equipment of the incumbents of the office and their conduct while in office, are entirely beside the question. A justice of the peace is a member of the judiciary. Of that office, this court has said that it "is one both ancient and honorable * * *. The justice of the peace has become an important judicial officer." (Narcida *vs.* Bowen (1912), 22 Phil. 365.) The humble occupant of the office of justice of the peace in the most remote and insignificant municipality is entitled to the same measure of respect as any member of this tribunal. A marshalling of justices of the peace to march at the command of the Chief Executive would constitute just as effective interference with judicial independence as would a similar attempt to transfer a member of the Supreme Court to some other jurisdiction.

We decide the question by holding that in case the public interest requires it, a justice of the peace of one municipality may be transferred to another only by the Governor-General, with the advice and consent of the Philippine Senate. Hence, it results in a decision to the effect that the plaintiff is lawfully entitled to the office of justice of the peace of Angat, Bulacan.

Judgment shall issue ousting the defendant from the office of justice of the peace of Angat, Bulacan, and placing the plaintiff in possession of the same. Without any finding as to costs, it is so ordered.

GEO. A. MALCOLM

We concur:

RAMON AVANCEÑA
JAMES A. OSTRAND
CHARLES A. JOHNS
NORBERTO ROMUALDEZ
ANTONIO VILLA-REAL

[CAPTION AND TITLE OMITTED]

JOHNSON, *J.*, dissenting:

The majority opinion is the boldest piece of judicial legislation to be found in the annals of jurisprudence.

The only question presented to this court for solution is: May the Governor-General transfer a justice of the peace from one municipality to another?

Section 206 of the Administrative Code of 1917 provides that "a justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice (of the peace): *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

Said section 206 now reads, by virtue of the judicial legislation, as follows: "A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice (of the peace): *Provided*, That in case the public interest requires it a justice of the peace of one municipality may be transferred to another"; *And provided, further*, That in case the public interest requires it a justice of the peace of one municipality may be transferred to another, *by the advice and consent of the Philippine Senate*.

The majority opinion has done, by judicial legislation, exactly what the Legislature itself refused to do when that question was squarely presented to it. Recently an effort was made by the Philippine Senate to amend said section 206, by adding a proviso thereto, "that in case the public interest requires it a justice of the peace of one municipality may be transferred to another *by the advice and consent of the Senate*." But such amendment was rejected. The court, in the majority opinion, has now done exactly what the Philippine Senate refused to do. The reason for the amendment to said section 206 made by the court can only be found in an effort to handicap the executive department of the government in the due enforcement of the laws of the Philippine Islands and the administration of justice. There is just as much reason for holding that the suspension or removal of a justice of the peace must receive the confirmation of the Senate as there is for holding that his transfer from one municipality to another must receive the approval of the Senate. The removal or suspension of a justice of the peace is a more severe penalty imposed upon him for incapacity,

inmorality or dishonesty than his transfer from one municipality to another when the public interest requires it.

The result of this decision, if the executive department of the Government is to maintain its self-respect, will be that hereafter justices of the peace will be removed and transferred when public interest requires it. Politics and corrupt political leaders have ruined many good men who might be of great value to the public in other localities and under different surroundings.

It is stated that said section 206 does not provide that the transfer of a justice of the peace from one municipality to another may be made by the Governor-General. If that statement has any merit at all as an argument, it must mean that ther Governor-General cannot transfer a justice of the peace and it must lead to the conclusion that the order of transfer in question is illegal for lack of authority. If lack of authority is the reason for its illegality, then the argument that the order must be confirmed by the Senate is hardly necessary.

I am not one of those who believe that the office of a justice of the peace or that of any other judicial officer is so high or sacred that it cannot be touched when by practices of immorality, political intrigue, dishonesty, disregard for the law, lewdness, and deviation from probity and integrity, renders a continuance of his services repugnant to public interest and the highest interests of the state.

The courts have no legislative powers. In the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power, to give effect to the intention of the legislature. The courts cannot read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words of a statute, is to alter the statute, o legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the court to construe, not to make the laws.

Every statute is understood to contain, by implication, if not by express terms, all such provisions as may be necessary

to effectuate the rights, powers, privileges or jurisdiction which it grants, and also such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.

When a statute confers certain powers upon the executive department of the government, the courts will give weight to the contemporaneous construction placed upon such a statute by the executive department, whose duty it is to enforce it. Courts will and should respect the contemporaneous construction placed upon a statute by the executive department of the government, whose duty it is to enforce it.

In a government of separate and independent departments—executive, legislative, and judicial—with separate and distinct functions, one department will not attempt to interfere with the performance of the executive duties of another. To permit such an interference would destroy the independence of the separate departments and would make one subject to the control of the others. For the judiciary to interfere with the executive department in the enforcement of a plain provision of the statute, would in effect destroy the independence of that department and would make it subject to the ultimate control of the judicial department. Such a conclusion or condition was never contemplated by the organizers of the government.

The courts should proceed with the greatest caution in the interpretation of statutes conferring express, clear and unambiguous authority upon the executive department of the government. The courts should never declare a statute void unless its invalidity is beyond reasonable doubt. In the present case the legislative department of the government has refused to give to the statute in question the meaning which the majority opinion seeks to give it.

In my opinion the petition should be denied and the executive department of the Government should be permitted to enforce the plain letter and spirit of the law without let or hindrance by the judiciary. The petitioner has shown himself unworthy to occupy his former position.

E. FINLEY JOHNSON

(CAPTION AND TITLE OMITTED)

STREET, *J.*, dissenting:

It is displeasing to have to disturb the serene and naive confidence pervading the lecture with which we are here favored, but I am compelled to say that, in my humble opinion, no more notable perversion of an express provision of law has ever received the seal of approval from this court. The statute declares in most explicit terms that "in case the public interest requires it, a justice of the peace of one municipality may be transferred to another" (Adm. Code, sec. 206). In the nature of things the act of transferring a justice of the peace is an executive act which must pertain, in the absence of express words to the contrary, to the executive branch of the government, at the head of which is the Governor-General. There is nothing in the provision quoted which indicates that the Philippine Senate shall have anything to do with making the transfer.

Nevertheless, in the opinion before us, the court asserts that the provision above quoted is to be read as if the words "with the advice and consent of the Senate" had been made an integral part thereof. I submit that there is absolutely no legal justification for this eccentric deviation from the ordinary canons of interpretation. Much has been said in the past by this court, in opinions written mostly by the author of the court's opinion in this case, about the constitutional importance of the three-old division of the powers of government, the idea being that one department should not participate in the functions of another except as expressly provided by law. The transfer of the justice of the peace being in its nature an executive act pertains *prima facie* to the executive branch of the government, and in order to justify the intrusion of a coördinate department into the exercise of that function, the court should be able to point to some specific provision to this effect. The statute contains no such provision, and in the court's opinion it is even admitted that when the provision authorizing the transfer of justices of the peace was added to section 206 of the Administrative Code, the Legislature refused to admit an amendment to the bill to the effect that the transfer should be effected "with

the advice and consent of the Senate." For this court, in the face of these considerations, to insert the same words into the section by judicial interpretation is entirely inadmissible.

In section 229 of the Administrative Code the Governor-General is given the unqualified power to remove any justice of the peace from office, and the opinion admits that the Senate does not participate in that function. There is no more reason why the Senate should participate in the act of transfer. The conclusion to which the court arrives in this case seems to be derived from the erroneous notion that the transfer of a justice of the peace from one municipality to another can only be effected by removal and reappointment, but the legislature has not prescribed this round-about procedure and the words of the statute ought to be taken for what they say.

The petition should be denied.

THOS. A. STREET

[CAPTION AND TITLE OMITTED]

VILLAMOR, *J.*, dissenting:

From the facts set out in the majority decision, the question to be determined is whether or not the consent of the Senate is necessary for the validity of the transfer of a justice of the peace from one municipality to another, made by the Governor-General by virtue of the discretional power conferred on him by the law to order such transfer in the interest of the public.

The law applicable to the case is section 206 of the Administrative Code as amended by section 1 of Act No. 2768, which is as follows:

> "SEC. 206. *Tenure of office—transfer from one municipality to another.*—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

In connection with the amendment of section 206 of the Administrative Code by Act No. 2768, it is in point to consider

that said amendment was at first drafted by the Senate in the following form:

> "SEC. 206. A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, That whenever the Government deems it wise, the justice of the peace of one municipality may be transferred to another. (Vol. 2, Journal of the sessions of the Philippine Senate, pp. 592–593.)

When the bill came up in the Senate for discussion and approval, Senator Rodriguez proposed an amendment to it, adding immediately after the word "another" the following: "provided that his appointment, by virtue of the transfer, be confirmed by the Senate." This amendment was approved by the Senate, but when the amended bill was referred to the House of Representatives, Senator Rodriguez's amendment was rejected, so that the bill was approved in the following form.

> "SEC. 206. A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another." (Vol. 13, Journal of the sessions of the House of Representatives, p. 554.)

With this substitution, the bill was returned to the Philippine Senate, where it was unanimously approved as amended by the House of Representatives. (See Vol. 2, Journal of the sessions of the Philippine Senate, p. 266.)

Such is the bill that became a law, and it is thus that section 206 of the Administrative Code was amended in the 1926 edition.

As may be seen, the majority decision adds to the law the requisite of a confirmation by the Senate, a requisite that the Legislature deliberately omitted. I deem it unnecessary to adduce arguments to show that the courts should not exercise legislative functions. This is a self-evident proposition and for this reason I am constrained to dissent from the majority decision.

Both parties in their briefs speak of the difference between transfer and appointment, and of the consent of the transferred judge, citing the decision in the case of Borromeo *vs.* Mariano (41 Phil. 322). Having expressed at length my humble opinion on these points in the case, I desire to reproduce here, in order to avoid repetition, the reasoning I there adduced.

(Sgd.) IGNACIO VILLAMOR

On January 10, 1928, the clerk of the Supreme Court issued the following notice:

[CAPTION AND TITLE OMITTED]

SIR: You are hereby notified that on the 10th day of January, 1928, a decision rendered by this Court in the above-entitled cause was filed in this office, whereby judgment is ordered issued ousting the defendant from the office of justice of the peace of Angat, Bulacan, and placing the plaintiff in possession of the same. Without any finding as to costs.

For the Clerk.

(Sgd.) JERONIMO SAMSON
Deputy Clerk

I certify that on this 10th day of January, 1928, copies of the foregoing notice have been mailed to the Attorney-General and Araneta & Zaragoza.

(Sgd.) JERONIMO SAMSON
Deputy Clerk

On January 20, 1928, the clerk of the Supreme Court of the Philippine Islands issued the following final judgment:

[CAPTION AND TITLE OMITTED]

JUDGMENT

The court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties

for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 10th day of January, A. D. nineteen hundred and twenty-eight;

By virtue thereof it is hereby adjudged and decreed that the defendant be ousted from the office of justice of the peace of Angat, Bulacan, placing the plaintiff in possession of the same, without any finding as to costs.

(Sgd.) V. ALBERT
Clerk, Supreme Court, P. I.

The petition for a reconsideration of the decision and judgment rendered in this case having been denied by the Supreme Court, on February 2, 1928, the defendant by its counsel filed with the Supreme Court the following exception, notice of intention to petition the Supreme Court of the United States for a writ of certiorari and motion for a stay of execution:

[CAPTION AND TITLE OMITTED]

EXCEPTION, NOTICE OF INTENTION TO PETITION THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI AND MOTION FOR A STAY OF EXECUTION.

Comes now the undersigned Attorney-General, in behalf of the defendant in the above-entitled action, and respectfully excepts to the resolution of this court denying his motion for a reconsideration of the decision rendered in said action, notice of which was received in this Office today, February 2, 1928, and also excepts to the final judgment entered therein on January 10, 1928.

Notice is hereby given that the defendant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Honorable Court in the above-entitled action.

The grounds, *inter alia*, upon which the defendant intends to petition the Supreme Court of the United States for a writ

of certiorari for the review of the decision and judgment of this Honorable Court herein-above referred to are:

(1) That the decision and judgment of this Honorable Court are contrary to law.

(2) That in this action a statute of the United States, *i. e.*, section 21 of the Act of Congress of August 29, 1916 (the Jones Law), is involved.

(3) That the decision and judgment of this Honorable Court violate the constitutional principle of separation of powers.

The defendant also respectfully prays for a stay of execution of the judgment rendered in the present case during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, February 2, 1928.

(Sgd.) DELFIN JARANILLA
Attorney-General

Copy received today, February 2, 1928.
ARANETA & ZARAGOZA
Attorneys for the plaintiff
28 Juan Luna, Manila

On February 3, 1928, the Supreme Court of the Philippine Islands adopted the following resolution:

Considering the motion of the Attorney-General in case R. G. No. 28275, Bonifacio Nicolas *vs.* Severino Alberto, excepting to the resolution of this court in denying this motion for rehearing, as well as to the final judgment entered therein; announcing his intention to apply to the Supreme Court of the United States of America for a writ of certiorari for the review of said judgment, and praying that the execution of the judgment entered therein be stayed during the pendency of said application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States: Exception noted, and the prayer for the stay of the execution of the judgment is hereby granted.

On February 4, 1928, the plaintiff by its counsel filed in the office of the Clerk of the Supreme Court the following opposition:

[CAPTION AND TITLE OMITTED]

OPPOSITION TO NOTICE FOR PETITION FOR A WRIT OF CERTIORARI AND FOR A STAY OF EXECUTION

Comes now the plaintiff in the above-entitled case, through and by his undersigned attorneys, and respectfully represents to this Honorable Court that he opposes the defendant's notice and motion of February 2, 1928 on the following grounds:

1. That on January 27, 1928, the Governor-General through his Secretary, Mr. C. W. Franks, issued an order revoking, upon recommendation of the Secretary of Justice, the order of July 2, 1927, transferring the plaintiff to San Jose del Monte, on the ground that this Honorable Court has decided that the Governor-General alone could not legally transfer him; and that, therefore, this case has now become a moot one. Copy of said order marked Exhibit A, is hereto attached and made a part of this opposition.

Moreover—

2. That the decision rendered by this Honorable Court in this case only involves the interpretation of a local law; that is, the proviso to section 206 of the Administrative Code, considered in the light of the rest of the provisions of this code regarding justices of the peace and the plain intent of the legislature in securing the independence of the judiciary.

3. That the question raised before this Honorable Court by the parties herein also chiefly centered on the interpretation of said proviso to section 206 of the Administrative Code, the defendant not having raised any constitutional question, in particular, regarding the powers of the Governor-General under section 21 of the Act of Congress of August 29, 1916. Therefore, this Honorable Court has had no opportunity to pass upon said question, now impliedly raised in defendant's notice and motion.

4. That the decision rendered in this case, involving merely the interpretation of a local law, is in consonance with the decisions in the cases of Borromeo vs. Mariano, 41 Phil. 322,

and Concepcion *vs.* Paredes, 42 Phil. 499, which were not taken for review by the United States Supreme Court because evidently these also but involved the interpretation of a local law.

5. That the gist of both the majority and the dissenting opinions in this case shows that, had the proviso to section 206 of the Administrative Code specifically provided that the Governor-General could transfer justices of the peace from one municipality to another without the consent of the Senate, that would have been, apparently, a valid law, the dissenting opinions, particularly, not containing even the slightest reference to section 21 of the Act of Congress of August 29, 1916, but merely confining themselves to declaring that the interpretation given by the majority decision to the said proviso constituted judicial legislation.

6. That the decision of this Honorable Court, apart from not being a proper subject for review by certiorari because it does not involve more than the interpretation of a local law, is so well founded that it is submitted the writ of certiorari being sought by the defendant would only unnecessarily delay the proceedings of this case, and would be productive of no beneficial results;

Whence, it appears that no case proper for certiorari has been made by the defendant (section 27 Jones Law; U. S. *vs.* Rosa, 14 Phil. 394; Paraiso *vs.* U. S., 207 U. S. 368, 52 L. Ed. 249; Pico *vs.* U. S. 228 U. S. 225, 52 L. Ed. 812; De la Rama *vs.* De la Rama, 241 U. S. 154, 60 L. Ed. 932), apart from the fact that by the order of January 27, 1928, the Governor-General has tacitly admitted that a review by the United States Supreme Court of the decision in this case is not sought by him.

Wherefore, it is respectfully prayed that this Honorable Court declare that the Attorney-General has made no case proper to be reviewed by the Supreme Court of the United States upon writ of certiorari and that, the order of July 2, 1927, transferring the plaintiff to San Jose del Monte having been revoked and cancelled by the order of January 27, 1928 (Exhibit A), thus putting the parties at their status quo, this

case has now, because of said order of revocation, become a moot question.

Respectfully submitted.

Manila, P. I., February 4, 1928.

ARANETA & ZARAGOZA
By (Sgd.) F. CAPISTRANO
Attorneys for plaintiff
28 Juan Luna, Manila

Copy furnished:
The Attorney-General.
By (Sgd.) I. Cacanindin.

Exhibit A

OFFICE OF THE GOVERNOR-GENERAL OF THE PHILIPPINE ISLANDS

MANILA, *January 27, 1928*

SIR: In view of the recent decision of the Supreme Court taking from the Governor-General the power of transfer heretofore, I have to advise that, upon the recommendation of the Honorable, the Secretary of Justice, the letter of this Office of July 2, 1927, transferring you from the office of justice of the peace of Angat, Bulacan, to the same position in San Jose del Monte, same province, is hereby cancelled.

By authority of the Governor-General:

C. W. FRANKS
Secretary to the Governor-General

Mr. BONIFACIO NICOLAS
Justice of the Peace
San Jose del Monte, Bulacan
(Through the Honorable,
The Secretary of Justice, Manila)

Copy for:
The Insular Auditor
The Director of Printing
The Director of Civil Service
The Attorney-General
The Secretary of Justice
The Municipal Treasurer, San Jose del Monte
The Judge, Court of First Instance, Malolos, Bulacan

On February 6, 1928, the defendant by its counsel filed in the office of the clerk of the Supreme Court the following reply:

[CAPTION AND TITLE OMITTED]

REPLY TO OPPOSITION TO NOTICE OF INTENTION TO PETITION THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI AND TO THE MOTION FOR A STAY OF EXECUTION.

Comes now the Attorney-General, in behalf of the defendant in the above-entitled action, and in reply to the opposition of plaintiff to defendant's notice of intention to petition the Supreme Court of the United States for a writ of certiorari and to the motion for a stay of execution, respectfully states:

1. That the letter of January 27, 1928, referred to in paragraph 1 of the said opposition, cancelling the order of July 2, 1927, which transfers the plaintiff from the office of justice of the peace of Angat, Bulacan, to the same position in San Jose del Monte, same province, was written and sent through inadvertence on the part of the Office of the Governor-General, as may be seen from the correspondence marked Exhibits A and B, hereto attached and made a part hereof.

2. That, therefore, the allegation in said petition to the effect that the question involved in the present proceedings has become a moot question, has no foundation in fact, for, by virtue of the cancellation of said letter of January 27, 1928, the controversy between the plaintiff and the defendant, which involves matters of public interest, still exists.

Wherefore, reiterating our allegation in our notice and motion filed with this Honorable Court on January 25, 1928, we respectfully pray that this court overrule the opposition filed by the plaintiff to our said notice and motion, and that the order heretofore entered in this case granting the stay of execution, be allowed to stand.

Respectfully submitted.

Manila, February 6, 1928.

(Sgd.) DELFIN JARANILLA
Attorney-General

Copy sent by mail to:
Messrs. ARANETA & ZARAGOZA
Attorneys for the plaintiff
28 Juan Luna, Manila

Exhibit A

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF JUSTICE
MANILA

1ST INDORSEMENT
February 4, 1928

Respectfully transmitted to the Attorney-General.

(Sgd.) LUIS P. TORRES
Acting Secretary of Justice

Exhibit B

OFFICE OF THE GOVERNOR-GENERAL OF THE
PHILIPPINE ISLANDS

MANILA, *February 4, 1928*

SIR: I hereby revoke letters of this Office dated January 27th addressed to Messrs. Bonifacio Nicolas and Severino Alberto, justices of the peace of San Jose del Monte, Bulacan, and Angat, Bulacan, respectively, cancelling their transfers as ordered on July 2, 1927. The said letters were written and sent without my knowledge and by inadvertence on the part of my office personnel.

You are hereby notified that the original orders of transfer dated July 2, 1927, still stand and are in effect.

Very respectfully,

(Sgd.) E. A. GILMORE
Acting Governor-General

The Honorable
The SECRETARY OF JUSTICE
Manila

On February 7, 1928, the plaintiff filed with the Supreme Court the following counter reply:

[CAPTION AND TITLE OMITTED]

COUNTER REPLY

Comes now the plaintiff in the above-entitled case, by his undersigned attorneys, and in answer to the Attorney-General's reply of February 6, 1928, to this Honorable Court respectfully represents:

I

That the Acting Governor-General's letter of February 4, 1928 (Exhibit B, Attorney-General's reply), purporting to revoke the order of January 27, 1928 (Exhibit A, Plaintiff's opposition of February 4, 1928), was made-to-order after an eleventh hour conference between the Governor-General, the Secretary of Justice, and the Attorney-General, after they had realized, upon receipt of a copy of the plaintiff's opposition of February 4, 1928, that the order of January 27, which revoked the order of transfer of July 2, 1927 (involved in the quo warranto proceedings), would be fatal to the right of the Government to petition the United States Supreme Court for a writ of certiorari to this Honorable Supreme Court. The circumstances which gave postumous birth to the letter of February 4, 1928 (Exhibit B, Attorney-General's reply) are clearly outlined in the following clipping from the *Sunday Herald* of February 5, 1928:

THE PHILIPPINES HERALD

THE PIONEER FILIPINO DAILY IN ENGLISH

Manila, P. I., Sunday, February 5, 1928

MOVES TO PREVENT CASE FROM BEING DIMISSED

Latest Action in Litigation Involving Powers of Chief Executive to Transfer Justices of Peace Decided Upon at Conference

Because of inadvertence, the Supreme Court may quash the appeal to the highest tribunal of the United

States in the Nicolas–Alberto case involving a fundamental law of the land, notwithstanding the fact that the local court has already approved the petition of the Attorney-General to sue out a writ of certiorari in Washington for a review of the judgment in which the Philippine tribunal rules against the contention of the Governor-General that he can transfer a justice of the peace without the consent of the Senate.

Acting Governor-General Gilmore yesterday cancelled the order he issued last Friday revoking another order by which Bonifacio Nicolas, justice of the peace of Angat, Bulacan, is transferred to San Jose del Monte.

The latest order is the thing which is going to make the case more complicated, according to those handling it. The explanation given is that the Supreme Court might consider the original Nicolas–Alberto case dropped through the issuance of the order Friday, thus justifying a dismissal of the appeal to Washington.

Attorney-General Delfin Jaranilla, however, is prepared to stage a stiff fight against the dismissal of the appeal. His point of view is that the cancellation yesterday of the Friday order places the case in its status quo. The last order, according to him, cures the defect of the case as affected by the preceding order.

As a result of the order issued Friday, the offices of the Governor-General, the Secretary of Justice, and the Attorney-General, had to take remedial steps yesterday. Judge Jaranilla started the move, he having taken it after he was informed yesterday of the motion of the law firm of Araneta and Zaragoza, counsel for Nicolas, asking the Supreme Court to dismiss the appeal to Washington on the ground that the question involved in the case has become moot in view of Governor Gilmore's order sending Nicolas back to his former post.

Forthwith a conference was held between the Chief Executive, the Department of Justice Head, and the Attorney-General. Following the conference Governor Gilmore issued his order yesterday.

It was found that the order revoking the transfer of Justice of the Peace Nicolas was issued through a misunderstanding and without the knowledge of the Governor-General. According to an authoritative source, the thing happened this way:

When the Supreme Court decided that the Governor-General cannot transfer a justice of the peace without the consent of the Senate, Acting Secretary of Justice

Torres sent a communication to the executive building recommending that, in view of the court's ruling, Nicolas be returned to his original post. C. W. Franks, Secretary to the Chief Executive, upon receipt of Mr. Torres' indorsement, wrote and signed an order directing Nicolas to resume his former office. The interested party was informed immediately of the order.

Meanwhile Attorney-General Jaranilla was waiting for the reply of the Governor-General to the former's request for instruction as to whether the case should be appealed to the Supreme Court of the United States. The instruction of the Governor for an appeal was sent to the Bureau of Justice through the Department of Justice Secretary, and, upon receipt of the communication, Judge Jaranilla filed with the Supreme Court his notice of appeal. But both the Ayuntamiento and Malacañang forgot altogether the recommendation and order for the reinstatement of Bonifacio Nicolas in his original station at Angat.

Tomorrow the Attorney-General will file his opposition to the motion of the counsel for Nicolas. The practice of the Supreme Court is to decide motions ex parte. But it is believed that in this particular case, the justices will hold a hearing.

II

That, as plainly appears from the order itself of January 27, 1928 (Exhibit A, plaintiff's opposition of February 4), said order was issued *upon recommendation of the Honorable, the Secretary of Justice*, and it is respectfully submitted that the circumstances attending the issuance of said order of January 27 (see clipping, *supra*) fairly and reasonably show that the issuance of said order was really authorized; that at the time it was issued it really expressed the true intent of the Government; that the alleged inadvertence regarding its issuance was not of fact, but of the *legal consequence thereof;* and that the letter of February 4, 1928, is clearly an attempt to revive a right which the Government has already lost at its own hands. The following clipping from the Herald of Saturday, February 4, 1928, particularly the paragraph included in red pencil, shows that the Governor-General, in a statement issued at an interview with the Herald representative, as of the opinion that the order of January 27 did not

affect the right of the Government to petition for a writ of certiorari, and impliedly admitted that it was authorized.

MANILA, P. I., *Saturday, February 4, 1928*

G. G. REVOKES HIS ORDER TRANSFERRING JUSTICE OF THE PEACE FROM HIS POST

Gilmore Declares However He Will Appeal to U. S. to Sustain His Right to Move Judge

The Executive Order transferring Justice of the Peace Bonifacio Nicolas from Angat, Bulacan, to San Jose del Monte, which caused the judge to institute quo warranto proceedings to determine the right of the Governor-General to transfer him, and which recently resulted in the rendering of a decision by the Supreme Court to the effect that the Chief Executive cannot transfer a justice of the peace from one station to another without the consent of the Senate, has been revoked by Acting Governor-General Gilmore himself, it was learned from authoritative sources yesterday.

The effect of Governor Gilmore's withdrawal of his former order is important because this action may affect the decision on the case when it is presented for a ruling in the United States Supreme Court. The revocation of the transfer of the justice of the peace of Angat may now prevent the case from being heard in the Federal Court, it is declared, as the question involved then only becomes an academic question.

By virtue of Governor-General Gilmore's order, Bonifacio Nicolas will again assume his seat as justice of the peace of Angat, and Severino Alberto, who had been assigned to Angat in his place, will now return to his former position at San Jose del Monte. Judge Nicolas was appointed to the Angat office in 1920 while Judge Alberto was appointed justice of the peace of San Jose del Monte in 1918. On July 2, 1927, Governor Gilmore ordered an exchange of posts between them because of alleged friction existing between Judge Nicolas and the municipal president and other residents of Angat.

Governor Gilmore, when interviewed yesterday, declared that his action in no way is intended to indicate that he will not push through the appeal to the United States Court for final determination. He declared,

however, that pending the decision of the Federal Court, the decision of the local high tribunal must be abided by. (The last paragraph is included in red pencil.)

III

That said order of January 7, 1928, has been duly published; that both the plaintiff and the defendant have received notice thereof; that pursuant to said order plaintiff did go to his office on Saturday, February 4, 1928, to resume the performance of his duties as justice of the peace of Angat; and that, therefore, there is now no actual case for further judicial determination by the Supreme Court of the United States;

IV

That the made-to-order letter of February 4, 1928, purporting to revoke the order of January 27, is addressed to the Secretary of Justice and not to the plaintiff in this case; consequently, there has been no legal notice thereof to the plaintiff, inasmuch as an office being, in a sense, property, the plaintiff cannot be deprived thereof without at least a personal notice to him;

V

That the plaintiff and the defendant having been placed at status quo by the order of January 27, insofar this proceedings is concerned, the case was legally terminated right then and there, by the issuance of said order; and that the letter of February 4, even if addressed to the plaintiff, cannot revive what has been lost, nor resume what has been exhausted, for what is done cannot be undone.

In view of all the foregoing, as well as the various grounds of our opposition of February 4, 1928, it is respectfully prayed that this Honorable Court declare that the instant case has now become a moot question; that the made-to-order letter of February 4, 1928, should not be allowed to revive a right already lost so that the Government of the Philippine Islands may not become a government of errors; and further, that, at any rate, the present case is not a proper subject for re-

view by the United States Supreme Court upon writ of certiorari, inasmuch as it merely involves the interpretation of a local law; to wit, the proviso to section 206 of the Administrative Code.

Manila, P. I., February 7, 1928.
Respectfully submitted.

ARANETA & ZARAGOZA
By (Sgd.) F. CAPISTRANO
Attorneys for the plaintiff
28 Juan Luna, Manila, P. I.

Copy furnished the Attorney-General.

On February 7, 1928, the Supreme Court of the Philippine Islands passed the following resolution:

Upon consideration of the opposition to notice of petition for a writ of certiorari and to the motion for stay of execution filed by the attorneys for the plaintiff in case R. G. No. 28275, Bonifacio Nicolas *vs.* Severino Alberto, and of the reply thereto presented by the Attorney-General as well as of the counter reply of the attorneys for the plaintiff, it is ordered that the same be noted and made a part of the record.

On February 10, 1928, the plaintiff by its attorney filed in the office of the clerk of the Supreme Court the following motion:

(CAPTION AND TITLE OMITTED)

MOTION

Comes now the plaintiff in the above-entitled case, by his undersigned attorneys, and respectfully prays this Honorable Court that that part of its resolution of February 3, 1928, granting a stay of execution be reconsidered on the following grounds, to wit:

1. The judgment of ouster in a quo warranto case is self-executing, and considerations of public policy prohibit the granting of a stay of execution thereof. This doctrine was tacitly recognized in the case of Government of the Philippine Islands *vs.* Milton E. Springer, et al., G. R. No. 26979.

2. A stay of execution would result in irreparable injury to the rights of the plaintiff and would undermine the prestige of the judiciary.

3. The Governor-General and the Secretary of Justice themselves, by their public utterances through the press, have revealed that it has been their intention to have the judgment of this Honorable Court executed, pending the proceedings for a writ of certiorari.

Wherefore, it is respectfully prayed that the order above referred to granting a stay of execution be reconsidered, and that an execution of the judgment of ouster be ordered.

The memorandum hereto attached is respectfully submitted in support of this motion.

Manila, P. I., February 10, 1928.

Respectfully submitted.

ARANETA & ZARAGOZA
By (Sgd.) F. CAPISTRANO
Attorneys for the plaintiff
28 Juan Luna, Manila

On February 11, 1928, the Supreme Court passed the following resolution, denying the above motion:

Upon consideration of the motion of the attorneys for the petitioner in case R. G. No. 28275, Bonifacio Nicolas *vs.* Severino Alberto, praying that that part of the resolution of this Court of February 3, 1928, granting a stay of the execution of the judgment entered therein be reconsidered, motion denied, and let said motion be made a part of the record.

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing ..... printed pages contain a true and correct transcript of the record of the case entitled Bonifacio Nicolas, plaintiff, *versus*

Severino Alberto, defendant, concerning an action for quo warranto, bearing No. 28275 of the General Register of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of ....., A. D. nineteen hundred twenty-eight.

V. ALBERT
Clerk of the Supreme Court
of the Philippine Islands

○

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 29, 1928

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[redacted]

[redacted]

October Term, 1921.

No. 344

SEVERINO ALBERTO,

Petitioner,

vs.

BONIFACIO NICOLAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

[redacted]

[redacted]

[redacted]

[redacted]

MEMORANDUM

The Subject Index and Table of Cases are omitted at the present time, because of the sudden illness of Lt. Col. William C. Rigby, counsel for petitioner.

They will be supplied within a few days, with the approval of the Court, upon Colonel Rigby's recovery.

In the Supreme Court of the United States

OCTOBER TERM, 1928.

No.

SEVERINO ALBERTO,

Petitioner,

v.

BONIFACIO NICOLAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Petitioner, Severino Alberto, prays a writ of certiorari to review the judgment of the Supreme Court of the Philippine Islands, January 20, 1928, ousting him from the office of justice of the peace of Angat, Province of Bulacan, and placing respondent in possession of the office.

A rehearing was denied. (Apparently on February 2, 1928; R. 52.)

On July 7, 1928, MR. JUSTICE VAN DEVANTER of this Court made an order extending for forty days from that date (that is, until and including August 16, 1928) the time for presenting this petition for certiorari to this Court. (Appendix III, *infra*, *p.* 30).

QUESTION PRESENTED

May the Governor General, by his own act, transfer a justice of the peace from one municipality to another, under the

proviso added March 5, 1918, by Act No. 2768, to Section 206 of the Philippine Administrative Code, which reads,

> *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another;

OR, is such a transfer, in effect, a new "appointment" within the meaning of Section 21 of the Organic Act, so as to require the consent of the Philippine Senate?

The Insular Supreme Court, by a divided court, six to three, held that the transfer needed the consent of the Senate.

STATUTES INVOLVED

Section 206 of the Philippine "Revised Administrative Code" of 1917 (Act No. 2711, approved March 10, 1917, as amended by Act No. 2768, approved March 5, 1918, adding the final *proviso*) provides:

> Sec. 206. *Tenure of office—Transfer from one municipality to another.*—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another.

Other provisions of the Organic Act for the Philippine Islands ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545), and Philippine statutes, are in Appendix I, *infra*, pp. 21–24.

Excerpts (translations) from the journals of the Philippine Senate and House of Representatives relating to the amendment of Section 206, *supra*, by Act No. 2768, approved March 5, 1918, adding the final *proviso* here in question, for transfers of justices of the peace from one municipality to another, are in Appendix II, *infra*, pp. 25–29.

STATEMENT

This was original *quo warranto* in the Philippine Supreme Court begun August 24, 1927, by the respondent here, Bonifacio Nicolas, as plaintiff, to oust the present petitioner (defendant below), Severino Alberto, from the office of justice of the peace of the municipality of Angat, Province of Bulacan,

and to reinstate Nicolas therein (R. 3–6; and Exhibits to Petition, R. 7–12). The present petitioner, defendant below, Alberto, answered through the Insular Attorney General (R. 14–16, with Exhibits R. 16–22), claiming the office in virtue of the Governor General's orders of July 2, 1927, directing a mutual transfer of the two justices of the peace. The case was tried on a "stipulation of facts" (R. 23–24, with Exhibits R. 24–36); and on January 10, 1928, the Insular Supreme Court by a divided court, six to three, handed down its "decision" (MALCOLM, J., with AVANCEÑA, C. J., and OSTRAND, JOHNS, ROMUALDEZ, and VILLA-REAL, JJ., concurring, R. 37–44; JOHNSON, J., dissenting, R. 44–47; STREET, J., dissenting, R. 48–49; and VILLAMOR, J., dissenting, R. 49–51), followed by its formal "judgment," January 20, 1928 (R. 51–52), in favor of the plaintiff below, respondent here, Bonifacio Nicolas, ousting this petitioner, defendant below, Severino Alberto, from the office of justice of the peace at Angat, and placing Nicolas in possession thereof.

It appears from the "stipulation of facts" (R. 23–24, with Exhibits, R. 24–36) that Bonifacio Nicolas, plaintiff below, respondent here, was appointed justice of the peace of Angat on February 14, 1920.[1] This petitioner, Severino Alberto, was similarly appointed justice of the peace of San Jose del Monte in the same province of Bulacan, on February 28, 1918; and each served in those places, respectively, until August 19, 1927, when, pursuant to the orders of transfer of the Governor General of July 2, 1927, they exchanged places with each other, over the protest of the present respondent, Nicolas, and after he had vainly endeavored to induce the Governor General to rescind the orders of transfer. Further, that on April 1, 1927, an "administrative complaint" was filed against Nicolas, then justice of the peace of Angat, by the municipal president, resulting in an investigation by the Judge of First Instance whose report substantially vindicated Nicolas of the charges against him but found that he had given cause for suspicion as to his impartiality because

[1] Nearly two years after March 5, 1918, the date Act No. 2708 was approved, adding to Sec. 206 of the Administrative Code the *proviso* for transfers of justices of the peace from one municipality to another.

of political activity in favor of the Nacionalista Party as against the Democrata Party. (*"Decision" of the Judge of First Instance, appended to the "Stipulation of Facts,"* R. 24–27). The Judge reprimanded him "to the effect that he must avoid hereafter giving cause for suspicion regarding partisanship and favoring any stated political party in Angat" (R. 26–27). The complainants against Nicolas appealed to the Governor General who declined to interfere with the finding of the Judge of First Instance; but, upon the recommendation of the Secretary of Justice, issued orders, July 2, 1927, directing an exchange of duties between the justices of the peace of Angat, province of Bulacan, and of San Jose del Monte in the same province, transferring Severino Alberto, the present petitioner, defendant below, from the position of justice of the peace for the municipality of San Jose del Monte to the same position in the municipality of Angat ("Exhibit B," R. 33), and similarly transferring Nicolas from the position of justice of the peace for the municipality of Angat to the same position in the municipality of San Jose del Monte ("Exhibit C", R. 32). Nicolas protested against the transfer, and requested its reconsideration (R. 33–35); which was denied; because, as Nicolas was later informed by the letter of the Secretary to the Governor General, August 30, 1927 ("Exhibit E," R. 36), "your transfer was made for the good of the service." Nicolas delivered possession of the office at Angat to Alberto, the present petitioner, defendant below, on August 19, 1927, under formal protest ("Exhibit G," R. 35).

The Insular Supreme Court, as above stated, found the Governor General's transfer orders of July 2, 1927, invalid; holding, by a divided court (R. 37–51, 40–41, 44) that such a transfer of a justice of the peace could only be made with the consent of the Philippine Senate.

After the denial of his petition for rehearing, the Insular Attorney General moved, on behalf of this petitioner, for a stay of execution pending this application to this Court for a writ of certiorari; and the stay was granted, February 3, 1928 (R. 52–53). The following day, February 4th, counsel for Nicolas filed an "opposition to notice for petition for a writ of certiorari and for a stay of execution" (R. 54–56), claiming that

the case had become moot because of a letter written by Mr. C. W. Franks, the Secretary to the Acting Governor General, on January 27th, after the entry of the Insular Court's "final judgment", but before it had disposed of the petition for rehearing. Mr. Franks' letter reads ("Exhibit A", R. 56):

> Office of the Governor General of the
> Philippine Islands,
> Manila, January 27, 1928.
>
> Sir:
>
> In view of the recent decision of the Supreme Court taking from the Governor-General the power of transfer heretofore, I have to advise that, upon the recommendation of the Honorable, the Secretary of Justice, the letter of this Office of July 2, 1927, transferring you from the office of justice of the peace of Angat, Bulacan, to the same position in San Jose del Monte, same province, is hereby cancelled.
>
> By authority of the Governor-General:
>
> C. W. FRANKS,
> *Secretary to the Governor-General.*
>
> MR. BONIFACIO NICOLAS,
> Justice of the Peace,
> San Jose del Monte, Bulacan
> (Through the Honorable,
> The Secretary of Justice, Manila.)

In reply, the Insular Attorney General, on behalf of this petitioner, set up (R. 57) that Mr. Franks' letter "was written and sent through inadvertence on the part of the office of the Governor-General", and filed a copy of an order of the Acting Governor-General, dated February 4th, reading ("Exhibit B", R. 58):

> Office of the Governor-General of the
> Philippine Islands,
> Manila, February 4, 1928.
>
> Sir:
>
> I hereby revoke letters of this Office dated January 27th addressed to Messrs. Bonifacio Nicolas and Severino Alberto, justices of the peace of San Jose del Monte, Bulacan, and Angat, Bulacan, respectively, cancelling their transfers as ordered on July 2, 1927. **The said letters were written and sent without my knowledge**

and by inadvertence on the part of my office personnel.

You are hereby notified that the original orders of transfer dated July 2, 1927, still stand and are in effect.

Very respectfully,

E. A. GILMORE,
Acting Governor-General.

The Honorable
The Secretary of Justice
Manila.

In a "counter reply" (R. 59–64) counsel for Nicolas attacked the good faith of the Acting Governor-General's statement in his order of February 4th, that Mr. Franks' letter of January 27th had been "written and sent without my knowledge and by inadvertence on the part of my office personnel"; counsel for Nicolas alleging (Par. I, "Counter Reply", R. 59):

> "That the Acting Governor-General's letter of February 4, 1928 (Exhibit B, Attorney General's reply), purporting to revoke the order of January 27, 1928 (Exhibit A, Plaintiff's opposition of February 4, 1928), was made-to-order after an eleventh hour conference between the Governor General, the Secretary of Justice, and the Attorney General, after they had realized, upon receipt of a copy of the plaintiff's opposition of February 4, 1928, that the order of January 27, which revoked the order of transfer of July 2, 1927 (involved in the quo warranto proceedings), would be fatal to the right of the Government to petition the United States Supreme Court for a writ of certiorari to this Honorable Supreme Court."

In support of their allegation counsel for Nicolas filed clippings from Manila newspapers purporting to set out the circumstances surrounding the issuance of the Acting Governor-General's order of February 4 (R. 59–63).

The court below, however, without discussing counsel's allegations, simply ordered, on February 7th, "that the same be noted and made a part of the record" (R. 64); and, upon counsel for Nicolas on February 10th moving for reconsideration of the stay of execution and for immediate execution of the judgment of ouster in his favor (R. 64–65), the court on February 11th formally denied that motion (R. 65), and allowed the stay of execution to stand. (Thereby, in effect,

adjudging that Mr. Franks' letter of January 27th was without effect, and that the suit had not become moot as counsel for Nicolas had claimed.)

OPINION BELOW

The gist of the opinion of the majority of the judges of the Insular Supreme Court (R. 37–44) is that, since the *proviso* to section 206 of the Administrative Code,

> "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another,"

is "silent as to the office or entity which may make the transfer," therefore (R. 40–41),

> "The more reasonable inference, indeed the only possible legal inference permissible without violating the constitution, is that the justice of the peace may be transferred by the exercise of the appointing power, and the appointing power consists of the Governor General acting in conjunction with the Philippine Senate."

The dissenting justices in separate dissenting opinions (JOHNSON, J., R. 44–47; STREET, J., R. 48–49; VILLAMOR, J., R. 49–51) considered the Governor General empowered to make the transfer without the intervention of the Senate.

PETITIONER'S CONTENTIONS

It is the contention of the petitioner that the court below erred in holding that the transfer needed the consent of the Insular Senate; and that, on the contrary, the Governor General is empowered to make the transfer without the intervention of the Philippine Senate, because:

1. The transfer of a justice of the peace from one municipality to another under the proviso to Section 206 of the Philippine Administrative Code is not an "appointment" within the meaning of Section 21 of the Organic Act, requiring the "consent" of the Insular Senate to "appointments"; but such a "transfer," while akin to both appointment and removal, is the exercise of a distinct and separate administrative power. It is an executive function of government; which, under Sections 21 and 22 of the Organic Act, must be vested either directly in the Governor General or else in an executive de-

partment under the supervision and control of the Governor General. There being no provision of law expressly vesting it in one of the executive departments, it inheres in the Governor General, and, under the Organic Act, does not require the consent of the Insular Senate.

2. The legislative intent to recognize the power to make such transfers as an executive function, vested in the Governor General by the Organic Act, is manifest from the facts that:

(1) The proviso to Section 206 providing for such transfers is silent as to who shall make them, leaving them to be made in accordance with the distribution of powers among the different departments of the Philippine Government under the Organic Act,—viz., by the Governor General; and,

(2) This intent is reinforced by the fact that, as first passed by the Insular Senate, Act No. 2768 (Senate Bill 163), adding the *proviso* for such transfers to Section 206 of the Administrative Code, required the transfer to be approved by the Senate; but that requirement was struck out by the House; and the Senate afterwards concurred in the House amendment; thus expressly receding from its first intent to require Senate concurrence in the transfers. (Appendix II, *infra*, pp. 25–29.)

3. This case has not become moot. The letter of Mr. C. W. Franks, Secretary to the Governor General, January 27, 1928, is of no effect. Mr. Franks' letter, purporting to revoke the Governor General's orders of mutual transfer of these two justices of the peace, of July 2, 1927, was written, as expressly stated by the Acting Governor General in his orders of February 4, 1928, cancelling it, "without my knowledge and by inadvertence on the part of my office personnel". The transfer of a justice of the peace,—(and the attempted revocation was, in effect, an attempted transfer back of these two justices to their former positions),—is an executive function placed by Section 22 of the Organic Act "directly" in the Governor General, and could not be exercised by his secretary without his knowledge or consent. Mr. Franks' letter is a mere nullity; and had no effect on the status of this case.

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law arising under the Organic Act, of general interest to the Government and People of the Philippine Islands. It has not been, and it is believed to be in the public interest that it should be, settled by this court. The decision by the court below was by a divided court, six to three.

WHEREFORE it is respectfully requested that this petition for a writ of certiorari to review the judgment of the Supreme Court of the Philippine Islands in this case be granted.

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Petitioner.

J. A. HULL,
Major General, The Judge Advocate General,

DELFIN JARANILLA,
Attorney General of the Philippine Islands,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

Opinion Below

The opinion of the Supreme Court of the Philippine Islands has not yet appeared either in the official Philippine Reports or in the Official Gazette of the Philippines.

The prevailing majority opinion, written by Mr. Justice Malcolm, in which Chief Justice Avanceña and Justices Ostrand, Johns, Romualdez, and Villa-Real concurred, is on pages 37 to 44 of the record. The dissenting opinion of Mr. Justice Johnson is on pages 44 to 47; that of Mr. Justice Street, dissenting, on pages 48 to 49; and that of Mr. Justice Villamor, dissenting, on pages 49 to 51.

Jurisdiction

The final judgment of the Supreme Court of the Philippine Islands was entered on January 20, 1928 (R. 51–52).

The record does not definitely state the date of the denial of the petition for rehearing or reconsideration; but the recitals in the record, and in the first paragraph of the Insular Attorney General's motion for a stay of execution pending this petition to this court for certiorari, indicate that the motion for rehearing was denied by the Philippine Supreme Court on February 2, 1928 (R. 52).

On July 7, 1928, Mr. Justice Van Devanter made an order (Appendix III, *infra*, p. 30) extending the time for presenting the petition for certiorari to this court for forty days from that date (that is, until and including August 16, 1928).

In this case the question is whether the construction placed by the Supreme Court of the Philippine Islands upon an act of the Philippine Legislature is in harmony with the Act of Congress known as the "Jones Law" which constitutes the Organic Act for the Philippine Islands, so that a statute of the United States is here involved.

Section 7 of the Act of February 13, 1925, gives this court power to review by certiorari a final judgment of the Supreme Court of the Philippine Islands in any case "wherein * * *

any statute * * * of the United States is involved". Section 8(a) of the Act of February 13, 1925, provides that "writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months" after the entry of the judgment to be reviewed: "*Provided*, That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court."

Question Presented

The question presented is whether the transfer of a justice of the peace from one municipality to another, under the proviso added March 5, 1918, by Act No. 2768, to Section 206 of the Philippine Administrative Code, reading.

> "*Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another";

is an executive function which may be exercised by the Governor General alone, by his own act, under Sections 21 and 22 of the Organic Act; OR, whether such a transfer is, in effect, a new "appointment" within the meaning of Section 21 of the Organic Act, requiring the consent of the Philippine Senate.

A collateral question is whether this case has become moot by reason of the letter of Mr. C. W. Franks, Secretary to the Acting Governor General, dated January 27, 1928 (R. 56), purporting to revoke the Governor General's order of July 2, 1927, directing a mutual transfer or exchange of stations between the two justices of the peace, parties to this suit; or whether, on the other hand, Mr. Franks' letter of January 27th was not simply void, because, as stated by the Acting Governor General in his letter of February 4, 1928 (R. 58), it was "written and sent without my knowledge and by inadvertence on the part of my office personnel".

Statutes Involved.

Pertinent portions of the Organic Act for the Philippines and of the Philippine statutes involved, together with excerpts from the journals of the Philippine Senate and House of Representa-

tives relating to the adoption of Act 2768 which added the *proviso* here in question to Section 206 of the Revised Administrative Code, are set out in the Petition (*ante*, p. 2) and in Appendices II and III (*infra*, pp. 21–29).

Statement

A statement of the case is in the Petition (*ante*, pp. 2–7).

Specification of Errors to be Urged; and Summary of Argument

The statement of "Petitioner's Contentions" in the petition (*ante*, pp. 7–8) contains specifications of the errors now urged, and summarizes the argument here following.

ARGUMENT

POINT I

THE "TRANSFER" OF A JUSTICE OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER IS AN EXECUTIVE FUNCTION OF GOVERNMENT VESTED IN THE GOVERNOR GENERAL BY SECTIONS 21 AND 22 OF THE ORGANIC ACT.

It is not an "appointment" within the meaning of the provision of Section 21 of the Organic Act requiring the "consent" of the Insular Senate to "appointments."

While "transfer" is akin both to appointment and to removal; it is, nevertheless, a separate and distinct kind of administrative act, and is the exercise of a distinct executive function.

That it is inherently an executive function is plain. It is not legislative nor judicial in its nature.

As an executive function, it is vested in the Governor General under Sections 21 and 22 of the Organic Act, making him the supreme executive power in the Philippines, charged with the responsibility for the faithful execution of the laws, and with the express provision (Sec. 22) that all executive functions must be directly under him or within one of the executive departments under his supervision and control. The only executive functions vested in the Legislature are: (1) that appointments to office must be with the consent of the Senate; (2) that each house appoints its own presiding officer, clerk, sergeant at arms, and other officials; and (3) that the Legislature elects "Resident Commissioners to the United States." (*Springer* v. *Government of the Philippine Islands*, and *Agoncillo* v. *Same, the "Board of Control Cases"*, decided by this Court May 14, 1928, 48 Sup. Ct. Rep. 480; *Sections 21, 18, and 20, Organic Act*, Appendix I, *infra*, pp. 21–22). All other administrative functions of government are to be discharged by the Governor General (or, if so provided by law, by an executive department under his "supervision and control"); both because they are executive functions inherent in the supreme executive power given him by Section 21 of the Organic Act and included within the responsibility for the faithful execution of the laws imposed upon him by that section, and also because

they are expressly vested in him by the *proviso* to Section 22 requiring that all executive functions be discharged directly by him or else by an executive department under his supervision and control. (*Springer* v. *Government of the Philippine Islands* and *Agoncillo* v. *the same, supra*). Removal from office is such an executive function. (*Myers* v. *United States*, 272 U. S. 52) Appointment is likewise an executive function, the sharing of the Senate in which, by giving its "consent", is really the exercise of an executive function by the Senate by virtue of the express provision of Section 21 of the Organic Act. (*Myers* v. *United States, supra; Springer* v. *Government of the Philippine Islands* and *Agoncillo* v. *Same, supra*).

The transfer of an officer from one district to another and the direction to him thereafter to perform his duties in the new location is likewise an executive function akin to appointment and removal; but is, nevertheless, a separate kind of executive act, which (not being expressly placed elsewhere by the Organic Act) is by the general terms of Sections 21 and 22, and under the tripartite form of government which the Act establishes for the Philippine Islands, vested solely in the Governor General.

POINT II

THE INTENT OF THE PHILIPPINE LEGISLATURE TO RECOGNIZE THE POWER TO MAKE SUCH TRANSFERS AS AN EXECUTIVE FUNCTION, VESTED IN THE GOVERNOR GENERAL BY THE ORGANIC ACT, IS MANIFEST; SINCE: (1) THE *proviso* TO SECTION 206 OF THE ADMINISTRATIVE CODE, PROVIDING FOR SUCH TRANSFERS, IS SILENT AS TO WHO SHALL MAKE THEM, LEAVING THEM TO BE MADE IN ACCORDANCE WITH THE DISTRIBUTION OF POWERS AMONG THE DIFFERENT DEPARTMENTS OF THE PHILIPPINE GOVERNMENT UNDER THE ORGANIC ACT,—VIZ., BY THE GOVERNOR GENERAL; AND, (2) THIS INTENT IS REINFORCED BY THE FACT THAT, AS FIRST PASSED BY THE INSULAR SENATE, ACT NO. 2768 (SENATE BILL 163), ADDING THIS *proviso*, REQUIRED THE TRANSFER TO BE APPROVED BY THE SENATE, BUT THAT REQUIREMENT WAS STRUCK OUT BY THE HOUSE, AND THE SENATE AFTERWARDS CONCURRED IN THE HOUSE AMENDMENT, EXPRESSLY RECEDING FROM ITS FIRST INTENT TO REQUIRE SENATORIAL CONSENT TO THE TRANSFERS.

(1).—*The proviso to Section 206 providing for such transfers is silent as to who shall make them, leaving them to be made in accordance with the distribution of powers among the different departments of the Philippine Government under the Organic Act,—viz., by the Governor General.*

A. That a "transfer" of a justice of the peace under the proviso of Section 206,

> "That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another",

is an administrative act or function of a separate kind, and is not either a "removal", nor an "appointment" within the meaning of Section 21 of the Organic Act requiring Senate consent to "appointments," but is a distinct, different, executive function inhering in the executive power under Sections 21 and 22 of the Organic Act, is plain from an examination of the nature of the tenure of office of a justice of the peace in the Philippine Islands.

The office of justice of the peace in the Philippines is not purely a local office. It is an office in the Philippine Government, whose incumbent is to discharge his duties either in the district for which he is originally designated or in that to which he may thereafter be transferred.

The justice of the peace is appointed by the Governor General with the consent of the Philippine Senate (Section 203, Revised Administrative Code; Appendix I, *infra*, p. 23), in accordance with the provisions of Section 21 of the Organic Act. He reports to, and is subject to supervision, investigation, suspension, and/or reprimand by, the Judge of First Instance (Secs. 228 and 229, Admin. Code; Appendix I, *infra*, p. 24); and is removable by the Governor General alone, either upon the recommendation of the Judge of First Instance or upon his own motion (*ibid*, Sec. 229). Upon the recommendation of the head of the Insular Department of Justice his territorial jurisdiction may be extended over any number of municipalities or other local political divisions or places not included in the jurisdiction of a justice of the peace already appointed (*ibid*, Sec. 203); or, upon like recommendation of the Department Head, the Governor

General may combine his office with that of one or more other such jurisdictions already established (Sec. 203, Admin. Code), and may thereby terminate his tenure of office (*ibid*, sec. 206); and the Governor General may designate in case of merger which of the justices affected by the change shall continue in office, the powers of the others ceasing (*ibid*, Sec. 204). The justice of the peace accepts office subject to those conditions, as well as to the *proviso* to Section 206 here in question:

> "*Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

Subject to all the foregoing limitations, his tenure of office is "during good behavior", "until they have reached the age of 65 years". (Secs. 203 and 206, Admin. Code.)

He is responsible to no local authority. No municipal or other local authority has to do, in any way, either with his appointment, removal, or transfer, or with defining or changing the boundaries of his territorial jurisdiction. His salary is fixed by Insular law and is paid by Insular funds (Secs. 220, 221, 222, Admin. Code; Appendix I, *infra*, pp. 23–24).

He is, therefore, in no sense a purely local official; but is an officer of the Insular Government, appointed by it, removable by it, paid out of the Insular Treasury, subject to having the boundaries of his jurisdiction changed or the jurisdiction itself merged in that of another justice of the peace, and his office itself thereby abolished by the administrative head of the central government, the Governor General; and, finally, subject to transfer by the central government to another district or another municipality where he shall continue to exercise his functions as a justice of the peace.

B. THIS *proviso* EXPRESSLY CONTEMPLATES "TRANSFER." It does not speak of it as a new "appointment";[1] does not

1. Herein plainly differing from the former provision in Section 155 of the Administrative Code, for "appointment" of a judge of first instance to be judge of another district, which was before the court in *Borromeo* v. *Mariano*, 41 Phil. Rep. 322. That provision of Section 155, since repealed, read: "but nothing herein shall be construed to prevent a judge of first instance of one district from being appointed to be judge of another district." (*Sec. 155, Act No. 2711, Laws of the Fourth Philippine Legislature.*) In the *Borromeo-Mariano*

require any new oath of office from the justice so transferred; makes no provision for a new acceptance of office by him.

C. ALL OF THE PROVISIONS OF THE ADMINISTRATIVE CODE RELATING TO JUSTICES OF THE PEACE ARE TO BE READ TOGETHER. (*Administrative Code*, Chap. 10. "Justices of the Peace", Secs. 203–230.)

So reading them, it is clear that the justices are not appointed to a purely local office in a particular municipality; but are appointed by the Philippine Government to be justices of the peace to discharge the duties of the office in the municipality originally designated, until or unless transferred to another municipality under the *proviso* to Section 206, or until or unless the boundaries of their jurisdictions are enlarged or decreased by action of the Governor General, or are abolished or merged, under Sections 203 and 204.

D. RESPONDENT NICOLAS WAS ORIGINALLY APPOINTED TO AND ACCEPTED THE OFFICE OF JUSTICE OF THE PEACE ON FEBRUARY 9, 1920 ("Stipulation of Facts", R. 23), NEARLY TWO YEARS AFTER THE APPROVAL, MARCH 5, 1918, OF ACT 2768, ADDING TO SECTION 206 THE PROVISO HERE IN QUESTION FOR TRANSFER OF JUSTICES OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER IN CASE THE PUBLIC INTEREST REQUIRES IT.

Therefore, he accepted office under the *proviso;* and while he was originally designated to discharge the duties of justice of the peace at Angat, he was bound to know that he was accepting the office subject to the liability of transfer to another municipality, in case the public interest should require it, under the terms of the *proviso*.

(2) *The intent of the Philippine Legislature to recognize the power of transfer of justices of the peace as an executive function vested in the Governor General by the Organic Act, is demonstrated and emphasized by the fact that, as first passed by the Insular*

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case, the court held that a judge of first instance could not be compelled to accept such an "appointment" to be judge of another district. By express language, that provision contemplated an actual new "appointment" by the appointing authority; that is, by the Governor General with the consent of the Senate, and, necessarily, a new acceptance by the appointee.

Such "appointment" is a wholly different thing from the "transfer" of a justice of the peace contemplated by the *proviso* to Section 206 here in question.

Senate, Act No. 2768 (Senate Bill 163), adding the proviso for such transfers to Section 206 of the Administrative Code, required the transfer to be approved by the Senate; but that requirement was struck out by the House, and the Senate afterwards concurred in the House amendment, thus expressly receding from its first intent to require Senate concurrence in the transfer.

The legislative history is shown by the translations in Appendix II, *infra*, pp. 25–29, from the proceedings of the Philippine Senate and House of Representatives, February 8, 1918, relating to Senate Bill 163; which, upon its approval March 5, 1918, became Act No. 2768.

POINT III

THIS CASE HAS NOT BECOME MOOT.

The letter of Mr. C. W. Franks, Secretary to the Governor General, of January 27, 1928 (R. 56; *ante*, Petition, p. 5), is of no effect. Mr. Franks' letter, purporting to revoke the Governor General's orders of mutual transfer of these two justices of the peace, of July 2, 1927, was written, as is expressly stated by the Acting Governor General in his orders of February 4, 1928, cancelling it, "without my knowledge and by inadvertence on the part of my office personnel" ("Exhibit B," R. 58; Petition, *ante*, pp. 5–6). Full faith and credit must be given to the Acting Governor General's statement. Such a transfer of a justice of the peace is an act requiring executive judgment and discretion. Not being vested by law in any executive department, it is by the terms of the *proviso* to Section 22 of the Organic Act, vested "directly" in the Governor General; and must be exercised by him in person. The attempt of his Secretary to exercise it in his name,—but in fact without his knowledge or consent,—was a nullity. It has no effect on the orders of transfer of July 2, 1927, which had been signed by the Acting Governor General personally ("Exhibit C", R. 32; and "Exhibit B," R. 33); and, therefore, had no effect upon the status of this case.

CONCLUSION.

For the foregoing reasons it is respectfully urged that the orders of the Acting Governor General of July 2, 1927, mutually

transferring these two justices of the peace, were valid and should be upheld; and that accordingly the judgment of the Supreme Court of the Philippine Islands in this case should be reversed and this cause remanded to that court with directions to enter a decree or judgment in favor of this petitioner, defendant below, Severino Alberto, and against the respondent, plaintiff below, Bonifacio Nicolas, recognizing the title of this petitioner, Severino Alberto, to the office of justice of the peace of Angat, Province of Bulacan, and dismissing the complaint of the plaintiff, Nicolas.

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Attorney for Petitioner.

JOHN A. HULL,
Major General, The Judge Advocate General,

DELFIN JARANILLA,
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Of Counsel.

APPENDICES.

APPENDIX I.—Statutory provisions.

APPENDIX II.—Excerpts (translations) from Journals of Philippine Senate and House of Representatives, concerning amendment to Section 206 of Revised Administrative Code, by Act 2768, adding the proviso for transfers of justices of the peace from one municipality to another.

APPENDIX III.—Order of Mr. Justice Van Devanter extending time to file petition for certiorari.

APPENDIX I.

STATUTORY PROVISIONS

UNITED STATES:

The Organic Act for the Philippine Islands ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545), provides:

> Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.
>
> Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law civil or criminal, continued in force by this Act as it may from time to time see fit. * * * *
>
> Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act.
>
> Sec. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature * * * * * * designated "The Philippine Legislature."
>
> Sec. 18. * * * * * Both houses shall convene at the capital * * * * and organize by the election of a speaker or a presiding officer, a clerk and a sergeant at arms for each house, and such other officers and assistants as may be required. * * * *
>
> Sec. 20. That * * * * there shall be chosen by the legislature two Resident Commissioners to the United States, * * * *
>
> Sec. 21. That the supreme executive power shall be vested in * * * * "The Governor General of the Philippine Islands." * * * * He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this Act to appoint, or whom he may hereafter be authorized by law to appoint; * * * * He shall have general supervision and control of all the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of

this Act, * * *. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, * * *.

Sec. 22. * * * * *Provided*, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. * * *

Sec. 26. * * * * The municipal courts of said islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; * * *

Section 9 of the Act "Temporarily to provide for the administration of the affairs of civil government in the Philippine Islands" (Act of July 1, 1902, c. 1369, 32 Stat. 691, 695), provided:

The municipal courts of said Islands shall possess and exercise jurisdiction as heretofore provided by the Philippine Commission, subject in all matters to such alteration and amendment as may be hereafter enacted by law.

PHILIPPINES.

The Philippine Administrative Code of 1916 (Act No. 2657 of February 24, 1916, effective July 1, 1916), in force at the time of the enactment of the present Organic Act, provided:

Sec. 235. *Appointment and distribution of justices of peace.*—One justice of the peace and one auxiliary justice of the peace shall be appointed by the Governor General for the city of Manila, the city of Baguio, and for each municipality, township, and municipal district in the Philippine Islands.

Sec. 238. *Tenure of office.*—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice.

The Revised Administrative Code of 1917 (Act No. 2711, approved March 10, 1917), adopted by the Philippine Legislature at its session next following the approval of the present Organic Act, replaced this section by Section 203 of the Re-

vised Code, so changed in accordance with the provision of Section 21 of the new Organic Act, *supra*, as to require the consent of the Philippine Senate to the appointment; and contemplating that no justices of the peace were thereafter to be appointed for the City of Manila for which a "Municipal Court" was created by Section 2466. The provision was thus made to read:

> Sec. 203. *Appointment and distribution of justices of the peace.*—One justice of the peace and one auxiliary justice of the peace shall be appointed by the Governor General with the advice and consent of the Philippine Senate for the City of Baguio, and for each municipality, township, and municipal district in the Philippine Islands. * * * * [1].

Section 238 of the 1916 Code, *supra*, providing for the tenure of office of justices of the peace, was reenacted without change as Section 206 of the 1917 Code; but, afterwards, by Act No. 2768, approved March 5, 1918, it was amended by adding to it the proviso now in question in this suit, and its title was also correspondingly changed, so that the section now reads (*and so read on* February 14, 1920, *when respondent Nicolas was originally appointed a justice of the peace*):

> Sec. 206. *Tenure of office—Transfer from one municipality to another.*—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: *Provided*, THAT IN CASE THE PUBLIC INTEREST REQUIRES IT, A JUSTICE OF THE PEACE OF ONE MUNICIPALITY MAY BE TRANSFERRED TO ANOTHER.

Other pertinent provisions of the Code (Revised Administrative Code of 1917) in force when respondent Nicolas was appointed a justice of the peace and still in force, are:

> Sec. 220. *Salaries of justices of peace.*—Except as provided in the next succeeding section, justices of the peace shall receive the following salaries per annum:
>
> (*a*) In municipalities of the first class, * * * ;
> (*b*) In municipalities of the second class, * * * ;
> (*c*) In municipalities of the third class, * * * ;
> (*d*) In municipalities of the fourth class and other places not specially provided for by law, * * * .

[1] Here follow, in Section 203 and in the following Section 204, provisions for the extension of the local jurisdiction of justices of the peace, and for the change and merger of such jurisdictions.

"Sec. 221. *Salaries of the judges of the Municipal Court of Manila and of the justice of the peace in provincial capitals.*—The salary of each of the Judges of the Municipal Court of Manila shall be * * *.

The annual salaries of the justices of the peace of the capitals of the following provinces shall be as follows: * * * * *[1]

Sec. 222. *Payment of salaries of justices of peace.*—In order to facilitate the payment of salaries of justices of the peace in the provinces, the treasurer of the respective political division concerned shall advance the same monthly out of any proper available funds in his possession and such advances shall be reimbursed monthly from the Insular appropriation.

Sec. 228. *Supervision of judges of first instance over justices of peace—Annual report of justice.*—The judge of the Court of First Instance shall at all times exercise a supervision over the justices of the peace within his district, and shall keep himself informed of the manner in which they perform their duties. * * *

The justice of the peace shall, during the first five days of the fiscal year, forward to said judge of the district a report concerning the business done in his court for the previous year, upon forms to be prescribed by the Attorney General.

Sec. 229. *Suspension and removal.*—If at any time the judge of first instance has reason to believe that a justice of the peace is not performing his duties properly, or if complaints are made which, if true, would indicate that the justice is unfit for the office, he shall make such investigation of the same as the circumstances may seem to him to warrant, and may, for good cause, reprimand the justice, or may recommend to the Governor General his removal from office, or his removal and disqualification from holding office and may suspend him from office pending action by the Governor General. The Governor General may, upon such recommendation or on his own motion, remove from office any justice of the peace or auxiliary justice of the peace.

[1] The amounts of certain of the salaries were increased by Act No. 3107, March 17, 1923, and Act No. 3310, December 2, 1926.

APPENDIX II.

TRANSLATIONS OF PROCEEDINGS OF THE PHILIPPINE SENATE AND HOUSE OF REPRESENTATIVES CONCERNING SENATE BILL NO. 163 WHICH BECAME ACT NO. 2768, APPROVED MARCH 5, 1918, TO AMEND SECTION 206 OF THE REVISED ADMINISTRATIVE CODE OF 1917.

I

SENATE PROCEEDINGS FEBRUARY 8, 1918. (Vol. II, "Diario de Sesiones del Senado de Filipinas," pp. 592–593).

SENATOR SISON: Mr. President, I ask the unanimous consent of the Senate for consideration at to-day's session of Senate Bill No. 163.

THE PRESIDENT: Is there objection?

(There being no objection.) The chair hears none. Let the bill be read.

CONSIDERATION OF SENATE BILL NO. 163

THE CLERK, reading: An Act to amend Article 206 of Act No. 2711 known as the "Administrative Code."

The Senate and House of Representatives of the Philippines in Legislature assembled, and by authority of the same, enact:

Section 1. That Section 206 of Act No. 2711 known as the "Administrative Code" be and the same is hereby amended so that the said section shall read as follows:

"Sec. 206. A justice of the peace having the requisite qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice of the peace: *Provided*, That a justice of the peace of one municipality may be transferred to another when the government deems it wise."

Sec. 2. This Act shall take effect upon approval.

THE PRESIDENT: The committee has the floor.

Oral statement by Senator Sison.

SENATOR SISON: Mr. President, the purpose of the present bill is to amend Section 206 of Act No. 2711, known as the

Administrative Code. The amendment consists of the following provision:

> "Provided, That a justice of the peace of one municipality may be transferred to another when the government deems it wise."

I believe, Mr. President, that there is no need to enter into the reasons at the present time and to explain before this body the wisdom of the adoption of this *proviso*, and therefore I ask that the bill be passed.

AMENDMENT OF SENATOR RODRIGUEZ: APPROVED

SENATOR RODRIGUEZ: Mr. President, I offer an amendment to the final proviso, or rather, that after the word "wise" ("*conveniente*") I would strike out the period and put a comma in its place, and insert the following by way of continuation:

> **"*Provided further*, That his appointment by virtue of the transfer be confirmed by the Senate."**

THE PRESIDENT: What does the committee say?

SENATOR SISON: The committee accepts the amendment, Mr. President.

THE PRESIDENT: Is there any objection on the part of the Senate? (There was no objection.) The chair hears none. The amendment is adopted.

SENATOR SISON: Mr. President, I ask a vote upon the bill as amended.

THE PRESIDENT: The question is upon the bill as amended. Those in favor say *Aye*. (Various senators: "Aye".) Those opposed, *No*. (Silence.) The bill will be read on the third reading.

APPROVAL ON THIRD READING OF SENATE BILL 163

THE CLERK, reading: An Act to Amend Section 206 of Act No. 2711, known as the "Administrative Code."

SENATOR SISON: Mr. President, I ask that the reading of the body of the bill be dispensed with.

THE PRESIDENT: Is there objection? (There was no objection.) The chair hears none. The reading of the body

of the bill is dispensed with. The question is now upon the bill on third reading. Those in favor of the bill as amended say *Aye*. (Various senators: "Aye".) Those opposed, *No*. (Silence.) The bill is passed.

II

PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES, SESSION OF FEBRUARY 8, 1918. (Vol. XIII, "Diario de Sesiones y Actas," House of Representatives, Philippine Legislature, pp. 553-554.)

THE PRESIDENT: The House calendar. Senate Bill No. 163 will be read.

TRANSFER OF A JUSTICE OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER

THE CLERK, reading:

Senate Bill No. 163 (offered by Senator Clarín). An Act to amend Section 206 of Act No. 2711, known as the "Administrative Code."

"Sec. 206. A justice of the peace having the requisite qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice of the peace: *Provided*, That a justice of the peace of one municipality may be transferred to another when the government deems it wise: *Provided further*, That his appointment by virtue of the transfer be confirmed by the Senate.

"Passed.

"I certify that the foregoing bill (Senate No. 163, 4th L. F.), was passed by the Senate the 8th of February, 1918. (*Signed*) F. Ma. Guerrero, Secretary of the Senate."

The following [Committee] amendments to the bill are offered:

1. Substitute for the first section of the bill the following:

"Section 1. Section 206 of Act No. 2711, entitled 'An Act to Revise the Administrative Code' is hereby amended so as to read as follows:

"Sec. 206. A justice of the peace, having the requisite legal qualifications, shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of another justice of the peace: *Provided*, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another.'"

2. Change the title so as to read as follows: "An Act to Amend Section 206 of Act No. 2711, entitled 'An Act to Revise the Administrative Code,' so as to authorize the transfer of justices of the peace from one municipality to another."

THE PRESIDENT: The committee has the floor.

MR. GENEROSO: If there is no objection on the part of the House, I ask that the bill be passed with the amendments proposed by the committee.

THE PRESIDENT: The question is upon the committee amendments. Are there any objections to the amendments? (There was no objection.) The chair hears none. Adopted. Shall the bill be passed to third reading?

THE HOUSE: Yes.

THE PRESIDENT: The title of the bill will be read.

THE CLERK, reading: An Act to Amend Section 206 of Act No. 2711, entitled "An Act to Revise the Administrative Code," so as to authorize the transfer of justices of the peace from one municipality to another.

PASSAGE OF SENATE BILL NO. 163

THE PRESIDENT: Those in favor of the bill as it has been amended, say *Aye*.

THE HOUSE: "Aye."

THE PRESIDENT: Contrary, *No*. (Silence.) Adopted.

III

SENATE PROCEEDINGS, FEBRUARY 8, 1918. (Vol. II, "Diario de Sesiones del Senado de Filipinas," p. *66*.)

SENATOR SISON: Mr. President.

THE PRESIDENT: The Senator from the Second District has the floor.

ACCEPTANCE OF HOUSE OF REPRESENTATIVES AMENDMENTS TO SENATE BILL NO. 163

SENATOR SISON: I ask immediate consideration of the amendments made by the House of Representatives to Senate Bill 163.

THE PRESIDENT: Is there any objection? (Silence.) The chair hears none.

The consideration of the House of Representatives amendments to Senate Bill No. 163 is in order.

SENATOR SISON: I move that the amendments be accepted, Mr. President.

THE PRESIDENT: If there is no objection, it is in order to vote upon the amendments.

Those who approve the acceptance of the amendments, please say *Aye*. (Various senators: "Aye".) Those not disposed to accept them, please say *No*. (Silence.) Adopted.

APPENDIX III

SUPREME COURT OF THE UNITED STATES.
October Term, 1928. No.

Severino Alberto, Petitioner,

vs.

Bonifacio Nicholas, Respondent.

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown,

IT IS NOW HERE ORDERED that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of forty days from this date.

(*Signed*) WILLIS VAN DEVANTER,
Associate Justice of the Supreme Court of the United States.

Dated this 7th
day of July, 1928.

FILED
MAR 1
CHARLES ELMO

In the Supreme Court of the United States.

OCTOBER TERM, 1928

No. 364.

SEVERINO ALBERTO,
Petitioner,

v.

BONIFACIO NICOLAS,
Respondent.

REPLY BRIEF FOR PETITIONER

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EDWARD A. KREGER,
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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 364.

SEVERINO ALBERTO, *Petitioner,*

v.

BONIFACIO NICOLAS, *Respondent.*

REPLY BRIEF FOR PETITIONER

It is requested that petitioner's brief in support of his petition for certiorari in this case stand as his brief on the hearing of the writ. Respondent has so treated it in his brief. Accordingly, this is filed as a reply brief for petitioner.

I.

RESPONDENT MISAPPREHENDS THE RELATION OF THE TERRITORIAL GOVERNMENT AND ITS LEGISLATIVE ENACTMENTS TO THE GOVERNMENT OF THE UNITED STATES.

1. Respondent's entire brief proceeds upon the mistaken assumption that this court has no jurisdiction to review the construction placed upon a local Philippine statute by the Philippine Supreme Court; but that, as counsel say (Respondent's brief, pp. 4–5):

"Reasoning by analogy, it may be said that where a *federal* question is connected with some matter pertaining to *local* law, this Honorable Court will decide only the federal question involved and nothing more, taking the decision of the Philippine Supreme Court on the local law as conclusive and as a matter adjudicated by another jurisdiction. * * * and that, moreover, to question and to reverse the interpretation given by the Philippine Supreme Court to the local law would be outside the scope of the jurisdiction of this Honorable Court."

2. In making this assumption, respondent's counsel overlook the difference between a territory, and a sovereign State of the Union. They assume that the same conclusiveness is to be attributed to the territorial court's construction of a local territorial statute, which this court has so frequently held is to be attributed to the decisions of a State supreme court construing its own local constitution or statutes; that is to say, that, as respondent's counsel phrase it (respondent's brief, p. 5):

"The construction given to the statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding as is the text upon the courts of the United States." (Citing some of the many decisions of this court to that effect.)

3. Counsel overlook the patent fact that the Government of the Philippine Islands is not the government of a sovereign State of the Union. On the contrary, it is the government of a territory of the United States. In the last analysis, the entire territorial government,—executive, legislative and judicial branches, all alike included,—constitutes but an agency of the Congress to aid the Congress in exercising its constitutional "Power to * * * make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Const., Art. IV, Sec. 3, Cl. 2), and to aid the United States in governing the territory.

That the territorial legislature is but an agency of the Congress is settled by the decisions of this court. *United States* v. *Heinszen & Co.*, 206 U. S. 370, 384–386; *Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226, 232; *Hamik* v. *Alaska Fisheries Corp.*, 263 U. S. 510, 514.

4. It necessarily follows that, under Section 2 of the Third Article of the Constitution, "The judicial Power of the United States", vested in this court by the first section of that Article, extends without qualification to the review of all of the decisions of the territorial supreme court, in all cases in law and equity pending before this court. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * * * *or which shall be made, under their Authority.*"

All of the laws enacted by the Philippine Legislature are made "under" the "authority" of "the Laws of the United States". They are made solely by authority of the laws of Congress, under which the Philippine Legislature, and the entire Philippine Government, exist, and from which they derive all their authority.

5. It is true that, as respondent's counsel themselves correctly say (Respondent's brief, p. 5), this court,

> "in a long line of decisions has enunciated that it will not be disposed to disturb the judgment of the Philippine Supreme Court construing local laws and enunciating a rule applicable in the Islands."
>
> *Gauzon* v. *Compañia General de Tabacos de Filipinas*, 245 U. S. 86, 89.

In so doing, this court has but applied to the judgments of the Supreme Court of the Philippine Islands the same rule which it had theretofore for many years applied to the judgments of the courts of last resort of the territories organized within the continental limits of the United States.

6. But, to say that it is "not disposed to disturb" such judgments, is a very different thing from saying it has no jurisdiction to do so. *The jurisdiction is beyond question.*

7. This court has frequently stated the rule as being that the territorial supreme court's interpretation of a local territorial statute will not be disturbed, unless "clearly erroneous". But that, if "clearly erroneous", it will be set aside.

> "While this construction, given by the Supreme Court of a Territory, *is not obligatory upon this court*, it is certainly entitled to respectful consideration, and in a doubtful case might well be accepted as turning the scale

in favor of the doctrine there announced." (*Italics ours;* Dakota Territory.)

Northern Pacific R. R. v. *Hambly*, 154 U. S. 349, 361.

"It is true that this ruling of the Supreme Court of the Territory does not, even in a question of practice arising under their local law, preclude this court from reviewing it, as would a decision of a state court in similar circumstances; but unless a manifest error be disclosed, we should not feel disposed to disturb a decision of the Supreme Court of a Territory construing a local statute." (Utah Territory.)

Fox v. *Haarstick*, 156 U. S. 674, 679.

To the same effect are:

Alzua v. *Johnson*, 231 U. S. 106, 110.
Ibanez v. *Hong Kong, etc., B'k'g Corp.*, 246 U. S. 621, 627.
Flemister v. *United States*, 207 U. S. 362, 375.
Doudell v. *United States*, 221 U. S. 325, 327–329.

8. In the present case, the territorial supreme court's interpretation of the statute in question is "clearly erroneous", as is pointed out in the petition for certiorari and supporting brief.

And, besides, that interpretation, if sustained, would make the statute trespass upon the executive power reserved by the Organic Act of the Congress to the Governor General and the executive departments under his supervision and control.

II

On the merits, it is submitted that, for the reasons set out in the petition for certiorari and supporting brief, the judgment of the Philippine Court in this case was clearly wrong, and should be reversed.

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Of Counsel.

Supreme Court,
FILED
FEB 21 1929
CHARLES ELMORE CROPLEY
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 364

SEVERINO ALBERTO, Petitioner,

v.

BONIFACIO NICOLAS, Respondent.

STATEMENT AND BRIEF FOR RESPONDENT.

HENRY J. RICHARDSON,
HAROLD R. YOUNG,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 364

SEVERINO ALBERTO, PETITIONER,

v.

BONIFACIO NICOLAS, RESPONDENT.

BRIEF FOR RESPONDENT.

Statement of the Case and Jurisdiction of This Court.

The question presented for determination in these certiorari proceedings is not the same question that was at issue before the Philippine Supreme Court in the original quo-warranto proceedings.

The Philippine Supreme Court had to pass upon the following question: Does the local law in the Philippines vest the Governor General with the power to transfer a Justice of the Peace from one municipality

to another? The Philippine Supreme Court answered the question in the negative, holding that the power to transfer a justice of the peace from one municipality to another, was an exercise of the combined power of removal and appointment, and that, consequently, said power could only be exercised by the Governor General, by and with the advice and consent of the Philippine Senate.

Against this decision, these certiorari proceedings have been instituted. Section 7 of the Act of Congress of February 13, 1925, grants this Court the power to review, by certiorari, a final judgment of the Supreme Court of the Philippine Islands in any case "wherein * * * any statute * * * of the United States is involved." And the jurisdiction of this Honorable Court is invoked solely on the ground that, in the instant case, a statute of the United States is involved; namely the Jones Law, which is the Organic Act passed by the Congress for the Philippine Islands.

To justify the jurisdiction of this Court, opposing counsel admit in their brief that "in this case the question is whether the construction placed by the Supreme Court of the Philippine Islands upon an Act of the Philippine Legislature is in harmony with the Act of Congress known as the Jones Law; which constitutes the Organic Act for the Philippine Islands; so that a statute of the United States is herein involved" (Brief of Opposing Counsel, p. 10).

The question, then, as pressed by opposing counsel, no longer remains the determination of the meaning of the local law in the Philippines on the matter, but

has been converted into whether or not that law is in harmony with the Philippine Organic Act.

Certainly, if the Jones Law were involved in this case, it would be because the alleged power of the Governor General to transfer a Justice of the Peace from one municipality to another without the advice and consent of the Senate, was derived from the Jones Law itself, and not merely from a local statute enacted by the local legislative authority in the Philippines.

The jurisdiction of this Honorable Court in the instant case, is limited to the interpretation of the Philippine Organic Act, the Act of Congress known as the Jones Law. It has no jurisdiction at all to interpret a local law of the Philippine Islands enacted by the Philippine Legislature.

In the leading case of Elmendorf *vs.* Taylor (10 Wheat. 152; 6 L. ed. 289), Chief Justice Marshall announced the well established doctrine that "the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. • • • On this principle the construction given by this Court to the Constitution and laws of the United States is received by all as the true construction; and on the same principle the construction given by the courts of the several States of the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws, or treaties of the United States."

In a later case, Shelby *v.* Guy (11 Wheat. 361, 367), this Honorable Court said:

> "Nor is it questionable that a fixed and received construction of their respective statute laws in their own courts makes, in fact, a part of the statute law of the country, however we may doubt the propriety of that construction. It is obvious that this admission may at times involve us in seeming inconsistencies, as where States have adopted the same statutes and their courts differ in the construction. Yet that course is necessarily indicated by the duty imposed on us to administer, as between certain individuals, the laws of the respective States, according to the best lights we possess of what those laws are."

It is well settled that where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more, taking the ecclesiastical decisions out of which the civil right has arisen as it finds them, and accepting those decisions as conclusive and as matters adjudicated by another jurisdiction. The civil courts in such a case act upon the theory that the ecclesiastical tribunals are the best judges of questions essentially ecclesiastical in nature (Watson v. Jones, 13 Wall. 679; See also note appearing in 49 L. R. A., 386).

Reasoning by analogy, it may be said that where a *federal* question is connected with some matter pertaining to *local* law, this Honorable Court will decide only the federal question involved and nothing more, taking the decision of the Philippine Supreme Court on the local law as conclusive and as a matter adjudicated by another jurisdiction. This Honorable Court

must agree that the Philippine Supreme Court is the best judge to interpret and pass upon a purely local law and that, moreover, to question and to reverse the interpretation given by the Philippine Supreme Court to the local law would be outside the scope of the jurisdiction of this Honorable Court.

This Honorable Court in a long line of decisions has enunciated that it will not be disposed to disturb the judgment of the Philippine Supreme Court construing local laws and enunciating a rule applicable in the Islands (Gauson v. Cia. Gral. de Tabacos de Filipinas, 245 U. S. 86).

The construction given to the statute of a state by the highest judicial tribunal of such state is regarded as a part of the statute, and is as binding as is the text upon the courts of the United States. (Oakes *v.* Mase, 165 U. S. 181; Sohn *v.* Waterson, 17 Wall. 596; Adams *v.* Nashville, 95 U. S. 19; Grafton *v.* Cummings, 99 U. S. 100; Nobles *v.* Georgia, 168 U. S. 398; New York, L. E. & W. R. Co. *v.* Pennsylvania, 158 U. S. 431; First Nat. Bank *v.* Chehalis County, 166 U. S. 440; Baltimore Traction Co. *v.* Baltimore R. Co., 151 U. S. 137; Aicardi *v.* Alabama, 19 Wall. 635; Chicago, M. & St. P. R. Co. *v.* Minnesota ex rel. Railroad & W. Commission, 134 U. S. 418; Fairfield *v.* Gallatin County, 100 U. S. 47; Morley *v.* Lake Shore & M. S. R. Co., 146 U. S. 162; St. Louis, I. M. & S. R. Co. *v.* Paul, 173 U. S. 404; First Nat. Bank *v.* Ayers, 160 U. S. 660; New York ex rel. Williams *v.* Weaver, 100 U. S. 539.)

In view of the foregoing considerations, this Honorable Court will not disturb the interpretation given

the said local statutory law by the Philippine Supreme Court unless that interpretation give the statute an effect contrary to the provisions of the Organic Act. To test this proposition let us suppose that the proviso to Section 206, permitting the transfer of Justices of the Peace, affirmatively stated that such transfers could be made *only* with the advice and consent of the Philippine Senate. Would such a statute have been contrary to any of the provisions of the Organic Law? What the Philippine Supreme Court has said is that the proviso as enacted into the law means just that and no more; that inasmuch as the proviso does not authorize the Governor General to transfer (remove and appoint) Justices of the Peace without the consent of the Philippine Senate, such transfer if made will have to be done in accordance with Sec. 21 of the Organic Act, which requires the consent of the Senate unless otherwise provided.

ARGUMENT.

Reply to Point I.

THE TRANSFER OF A JUSTICE OF THE PEACE FROM ONE MUNICIPALITY TO ANOTHER IS, IN LEGAL EFFECT, A COMBINED REMOVAL AND APPOINTMENT; HENCE, HAVING THE NATURE OF AN APPOINTMENT WITHIN THE MEANING OF THE PROVISIONS OF SECTION 21 OF THE ORGANIC ACT, ITS EXERCISE MUST BE WITH THE ADVICE AND CONSENT OF THE PHILIPPINE SENATE.

In deciding the merits of this case, this Honorable Court is bound by the interpretation given by the Phil-

ippine Supreme Court to the (word) "transfer" of a Justice of the Peace from one municipality to another.

Opposing counsel makes the gratuitous statement that, although a "transfer" is akin both to appointment and to removal, it is, nevertheless, a separate and distinct kind of administrative act, and is the exercise of a distinct executive function (Opposing Counsel's Brief, p. 13). Two kinds of "transfer" are to be noted. We should distinguish "transfers" from one *locality* to *another* and "transfers" from *one office* to *another office*. In the former case, no new appointment takes place. In the latter, the "transfer" amounts, in reality, to a removal and a new appointment.

The Philippine Legislature in clear words has provided that "one Justice of the Peace and one Auxiliary Justice of the Peace shall be appointed by the Governor General, with the advice and consent of the Philippine Senate, *for* * * * *each municipality*, * * * in the Philippine Islands * * *" (Administrative Code, Section 203; Act No. 3107, Section 7) (Italics ours). He takes the oath of office for the performance of his duties as Justice of the Peace of the *specific municipality* to which he is appointed (Ibid, Sec. 205), just as a Judge of First Instance takes the oath of office for the performance of his duties as Judge of the *particular district* to which he is appointed (See Concepcion v. Paredes, 42 Philippines 599). A comparison of the provisions regarding Judges of First Instance (Sections 65, 66, 148, 154, 128, 155 and 173) with those regarding Justices of the Peace (Sections 203, 204,

205, 206, 210 and 229) shows that "*the intention of the law is to recognize separate and distinct judicial offices*" (See Borromeo *v.* Mariano, 41 Philippines 322).

In the appointment of a Justice of the Peace, the concurrence of the Senate, which is also an executive act involving the exercise of discretion (Concepcion *v.* Paredes, 42 Philippines 591), is secured only for the *specific municipality* to which the appointment is made. Consequently, a "transfer" by the Governor General alone would be to make the transferee Justice of the Peace of another municipality without the concurrence of the Senate, which is an essential requisite provided for by the Philippine Organic Act, in the absence of which the executive act is incomplete.

Now, the Philippine Supreme Court in interpreting the foregoing provisions has dispelled any possible doubt regarding the same, by holding that:

(*a*) "The Justice of the Peace is appointed to a specific municipality" (Transcript of Record, p. 41). Hence, it is useless to argue that "Justices of the Peace are not appointed to a purely local office in a particular municipality" (Opposing Counsel's Brief, p. 17).

(*b*) "The Justice of the Peace gets in (to a certain municipality) by appointment. He gets out by removal. There is no half way in-or-out method. A transfer of a Justice of the Peace outside of the municipality to which he was appointed is, in legal effect, a combined removal and appointment." (Transcript of Record, pp. 41 and 42). Again, it is useless to argue that the "proviso expressly contemplates transfer. It does not speak of it as a new appointment" (Opposing Counsel's Brief, p. 16).

The decision of the Philippine Supreme Court interpreting the different provisions of the Philippine Law with reference to the office of Justice of the Peace is now an integral part of the law itself. Its effect is equivalent to a legislative enactment.

Whatever may be the rule in other jurisdictions, it can not be denied that, by the local law which prevails in the Philippine Islands, judges of the courts of first instance and justices of the peace are respectively appointed to specific provinces and municipalities, and they may not be transferred, in the case of judges, from them without their consent, and in the case of Justices of the Peace, without the consent of the Philippine Senate. (Borromeo *v.* Mariano *supra;* Concepcion *v.* Paredes *supra;* and the decision of the Philippine Supreme Court in the *instant case.*)

As already stated, the jurisdiction of this Honorable Court in the instant case is limited to interpreting the Philippine Organic Act, which is an Act of Congress. It has no jurisdiction at all to interpret the statutory law as enacted by the Philippine Legislature with reference to the nature of the office of Justices of the Peace.

We agree with opposing counsel in their interpretation of Sections 21 and 22 of the Organic Act (opposing Counsel's Brief, pp. 13 & 14). There is no controversy at all regarding the nature and extent of the executive functions vested in the Governor General. The disagreement, as can readily be seen, lies in the interpretation of the Philippine Law, purely local, enacted by the Philippine Legislature on the na-

ture of the office of Justice of the Peace. If, as contended by opposing counsel, a Justice of the Peace were appointed at large for any and all of the municipalities in the Philippines and not to a particular municipality (Opposing Counsel's Brief, p. 17), we could agree with them that in such a case, the transfer of a Justice of the Peace from one municipality to another might not amount, in legal effect, to the exercise of the combined power of removal and appointment. But such is not this case.

As already stated, the offices of Justice of the Peace of the different municipalities in the Philippines are distinct and separate from one another. They are as different and distinct from one another as the office of Justice of the Peace of a certain municipality is from the office of Judge of First Instance of a certain judicial district. If this Honorable Court were to decide that a Justice of the Peace might be transferred from one office to another, it could just as well decide also that the Governor General were, likewise, empowered to transfer a Justice of the Peace from his municipality to the office of Judge of First Instance of a certain district.

Reply to Point II.

THE PHILIPPINE LEGISLATURE NEVER INTENDED TO VEST IN THE GOVERNOR GENERAL THE POWER TO MAKE SUCH TRANSFERS WITHOUT THE ADVICE AND CONSENT OF THE SENATE. THAT THE PHILIPPINE LEGISLATURE INTENDED THE CONTRARY HAS ALREADY BEEN SETTLED BY THE PHILIPPINE SUPREME COURT, AND THIS HONORABLE COURT WILL NOT PASS UPON THE MATTER.

It is argued by opposing counsel that, since the proviso to Section 206 of the Philippine Administrative Code providing for such transfers is silent as to who shall make them, such transfers should be made in accordance with the distribution of powers among the different departments of the Philippine Government under the Organic Act.

Here, again, opposing counsel tries to argue that a Justice of the Peace is appointed at large for any municipality in the Philippines, and not to a particular municipality; and that, consequently, a transfer of a Justice of the Peace from one municipality to another is merely a transfer of a public officer from one *locality* to another, and not a transfer of an officer from one *public office* to another. (Opposing Counsel's Brief, pp. 15 & 16).

But, as already stated in our reply to Point One, the nature of a transfer of a Justice of the Peace from one municipality to another is entirely a local statutory matter, and the Philippine Legislature has provided that the offices of Justice of the Peace of the different municipalities are distinct and separate from one another.

In answer to the point raised by opposing counsel with reference to the legislative history of the proviso in question, we can do no better than to quote from the learned opinion of the Philippine Supreme Court, penned by Mr. Justice Malcolm, the following:

> "The Attorney-General endeavors to demonstrate the purpose of the Legislature by citing the legislative history of the bill which later became Act No. 2768. The Attorney-General shows that when the house bill was submitted to the Senate an amendment was approved by inserting the following: '*siempre que su nombramiento, en virtud del traslado, sea confirmado por el Senado.*' (Provided, that his appointment by virtue of the transfer be confirmed by the Senate.) Later the amendment was eliminated and the bill approved in its present form. It may, therefore, be that the Legislature had in view, by refusing to accept the amendment, precisely what is now contended for, which is to place the power of transfer in the hands of the Governor-General without legislative restriction. An equally permissible supposition is that the Legislature thought the amendment unnecessary and superfluous because of the plain meaning of the bill without it. The subject is so confused that no help can be derived from this source" (Transcript of Record, p. 43).

That the foregoing interpretation of the law adopted by the Supreme Court of the Philippine Islands is similar to that adopted by the Executive Department of the Government is shown by the following opinions:

> "*Justice of the peace cannot be transferred without consent of Senate.*—The consent of the

Senate is necessary to appointments by transfer as well as to newly combined jurisdictions, for the following reasons: (1) Justices of the peace and auxiliary justices are appointed, as required by Section 203, to a specific municipality; (2) a justice of the peace whose jurisdiction has been abolished or merged with that of another must necessarily cease to hold office for the position to which he was appointed and which has been abolished. (Op. Ins. Aud., Aug. 11, 1924.)

"*The proviso does not authorize transfer without confirmation of Senate.*—The last proviso was not inserted to give power to appoint justices of the peace to other municipalities or to combine jurisdiction by transfer without further confirmation from the Senate, but was inserted merely to assert the right of the Government to transfer justices of the peace from one jurisdiction to another even without their consent. (Op. Ins. Aud., Aug. 11, 1924.)

Araneta on the Administrative Code, Vol. 1, 350.

Be that as it may, the fact remains that, the Philippine Supreme Court having passed upon the intent of the Philippine Legislature in enacting the said proviso and given to it a definite and clear interpretation, this Honorable Court will not pass upon the subject in these certiorari proceedings.

Conclusion.

The Philippine Law, as enacted by the Philippine Legislature and as interpreted by the Philippine Supreme Court, is to the effect that the offices of Justice of the Peace in the different municipalities, are distinct

and separate from one another; that a transfer of a Justice of the Peace from one municipality to another is not a transfer of an officer from one locality to another, but a combined removal and appointment of an officer from one office to another distinct office.

This being the local statutory law on the matter, it is evident that, under the Philippine Organic Act, the so-called transfer of a Justice of the Peace from one municipality to another can only be made by the Governor General by and with the advice and consent of the Philippine Senate.

We submit, therefore, that the only question before this Honorable Court for solution is whether the provision of the Philippine Administrative Code permitting the transfer of a Justice of the Peace from one municipality to another as interpreted by the Philippine Supreme Court is contrary to the Organic Act (Jones Law), which provides that the Governor-General of the Philippine Islands "* * * shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine Senate * * *." This being the only question presented to this Honorable Court for review, we pray that judgment may be entered for the respondent.

Respectfully,

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Of Counsel:
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(6005)

SUPREME COURT OF THE UNITED STATES.

No. 364.—October Term, 1928.

Severino Alberto, Petitioner, *vs.* Bonifacio Nicolas.	On Writ of Certiorari to the Supreme Court of the Philippine Islands.

[April 8, 1929.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This is a certiorari to the Supreme Court of the Philippine Islands to bring here for review an order of ouster in *quo warranto* brought by Bonifacio Nicolas against Severino Alberto to test the right of Alberto to hold the office of justice of peace of the town of Angat, province of Bulacan, in those Islands. The issue is the legal right of the Governor-General to transfer a justice of the peace from one municipality to another without the consent of the Philippine Senate.

After issue made, the parties, through their counsel, signed a stipulation of facts, from which it appears that on February 9, 1920, the plaintiff was appointed a justice of the peace of Angat, Bulacan, by the Governor-General with the advice and consent of the Philippine Senate; that he qualified, took possession of, and exercised the office on and since February 14, 1920, up to August 19, 1927, when he was forced to surrender its possession to the defendant. On February 28, 1918, the defendant was appointed justice of the peace of San Jose del Monte, Bulacan, by the Governor-General, with the advice and consent of the Senate; he qualified for and exercised the office since then up to August 19, 1927, when, pursuant to an order transferring him to the office of justice of the peace of Angat, Bulacan, he exercised, and has since exercised, the latter office. There was a proceeding by the municipal president of Angat against the plaintiff, which was investigated by the Judge of First Instance of Bulacan, resulting in a report which disclosed unsatisfactory conditions and political partisanship but with which the president of Angat was not content because the plaintiff was not removed. The matter was appealed to the Secretary of Justice. Thereafter, on July 2, 1927, the Governor-General transferred the plaintiff from Angat to San

Jose del Monte, and also transferred the defendant to the municipality of Angat. There were protests by plaintiff against the transfer and applications by him for reconsideration; and finally through proceedings before the Court of First Instance of Bulacan, the plaintiff yielded up his office under protest on August 19, 1927, and since that time the defendant has exercised the office of justice of the peace of Angat, excluding the plaintiff therefrom.

The Supreme Court, after the hearing, rendered an opinion by a vote of six judges to three, granting against Alberto a judgment of ouster to which an application for certiorari to this Court has been duly made and granted (October 29, 1928).

Our jurisdiction in this case is questioned. The Act of February 13, 1925, § 7, c. 229, 43 Stat. 940, provides that a certiorari may be issued by this Court to the Supreme Court of the Philippine Islands in any case "wherein the Constitution or any statute or treaty of the United States is involved." The effect of the Philippine Organic Act of Congress, approved August 29, 1916, by Sec. 21, c. 416; 39 Stat. 545, 552, is that an appointment of a justice of the peace by the Governor-General must be consented to by the Senate of the Islands. Section 206 of the Philippine Administrative Code of 1917, as amended by Act 2768, approved March 5, 1918, enacts a proviso that "in case the public interest requires it, a justice of the peace of one municipality may be transferred to another." The point in question is whether that proviso is to be construed as impliedly requiring the consent of the Philippine Senate to the transfer, or whether it was intended to avoid that necessity.

In reaching the conclusion that the proviso of Section 206 as properly construed required the consent of the Senate, the Supreme Court used these words:

"The body of the section sanctions the holding of office by justices of the peace during good behavior. The proviso qualifies this by providing 'That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another.' At once it is noted that the law is silent as to the office or entity which may make the transfer. The law does not say may be transferred 'by the Governor-General.' The insertion of the words 'by the Philippine Senate' would be as justifiable. The more reasonable inference, indeed the only possible legal inference permissible without violating the constitution, is that the justice of the peace may be transferred by the exercise of the appointing power, and the appointing power consists of the Governor-General acting in conjunction with the Philippine Senate."

In other words, the interpretation that the court gives to the amended law, with the proviso, depends clearly on what the court calls the Constitution, that is, on the Organic Act, and therefore, even if its construction of the proviso of Section 206 could be sustained, it still involved the Organic Act. We have jurisdiction.

In order to understand the scope of this case, we should point out that the Organic Act provides, by Sections 6, 7, 8 and 12, that the laws then in force in the Philippines were to remain in effect, except as altered by the Act itself, until altered, amended or repealed by the legislative authority provided in the Act, or by an Act of Congress; that the legislative authority therein provided, had power, when not inconsistent with the Act, to amend, alter, modify or repeal any law, civil or criminal, continued in force by the Act as it might see fit; and that the general legislative powers in the Philippines, except as otherwise provided in the Act, were vested in the Philippine Legislature, consisting of an Assembly and a Senate.

Section 21 provided that the Governor-General of the Philippines should be the supreme executive power in the Philippines, and that he should, unless otherwise provided in the Act, appoint, by and with the consent of the Senate, such officers as might then be appointed by the Governor-General, or such as he was authorized by that Act to appoint, or whom he might thereafter be authorized by law to appoint; that he should have general supervision and control of all the departments and bureaus of the government in the Philippine Islands as far as not inconsistent with the provisions of the Act, and that he should be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within those Islands; that all executive functions of the government must be directly under the Governor-General, or within one of the executive departments under the supervision and control of the Governor-General. *Springer* v. *Philippine Islands*, 277 U. S. 189.

After the passage of the Organic Act of 1916, it became necessary to revise the Administrative Code so as to make it conform to the Organic Act, and it is that Code of 1917 with such amendments as have been made by the Legislature, that is now the existing law.

In the Administrative Code of 1916, Act No. 2657, approved February 24, 1916, effective July 1, 1916, provision was made for

the appointment and distribution of the justices of the peace as follows:

"Sec. 235. Appointment and distribution of justices of the peace. —One justice of the peace and one auxiliary justice of the peace shall be appointed by the Governor General for the city of Manila, the city of Baguio, and for each municipality, township, and municipal district in the Philippine Islands.

"Sec. 238. Tenure of office.—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice."

Except for the elimination of the provision for justices of the peace in Manila, these sections were reenacted without change in Sections 203 and 206 of the Revised Code of 1917, which also required the consent of the Philippine Senate to the appointment of officers. Section 206 of the 1917 Code was amended by Act No. 2768, approved March 5, 1918, which added to it the proviso now in question in this suit, and its title was also correspondingly changed, so that the section now reads:

"Sec. 206. Tenure of office — transfer from one municipality to another.—A justice of the peace having the requisite legal qualifications shall hold office during good behavior unless his office be lawfully abolished or merged in the jurisdiction of some other justice: Provided, That in case the public interest requires it, a justice of the peace of one municipality may be transferred to another."

Other pertinent provisions of the Revised Code in force when respondent Nicolas was appointed a justice of the peace, and still in force, are:

Sections 220 and 221 provide for salaries of justices of the peace in municipalities of the first class, second class, third class and fourth class, in other places not now specially provided for by law, and in provincial capitals.

Section 222 provides for payment of the salaries of justices of the peace out of insular funds.

Section 228 provides that the judges of the courts of first instance shall at all times exercise a supervision over the justices of the peace within their respective districts, and shall keep themselves informed of the manner in which these justices perform their duties, and during the first five days of the fiscal year the justices shall forward to the judges of their respective districts a report concerning the business done in their courts for the previous year.

Section 229 provides that if at any time the judge of first instance has reason to believe that a justice of the peace is not performing his duties properly, or if complaints are made which, if true, would indicate that the justice is unfit for office, he shall make such investigation of the same as the circumstances may seem to him to warrant, and may, for good cause, reprimand the justice, or may recommend to the Governor-General his removal from office, or his removal and disqualification from holding office and may suspend him from office pending action by the Governor-General. The Governor-General may, upon such recommendation or on his own motion, remove from office any justice of the peace or auxiliary justice of the peace.

Section 203, the first half of which has already been quoted, further provides:

"Upon the recommendation of the Department Head, the territorial jurisdiction of any justice and auxiliary justice of the peace may be made to extend over any number of municipalities, townships, municipal districts, or other minor political divisions or placed not included in the jurisdiction of a justice of the peace already appointed; and upon like recommendation of the Department Head, the Governor-General may combine the offices of justices of the peace for two or more such jurisdictions already established, and may appoint to the combined jurisdiction one justice of the peace and one auxiliary justice, at a salary not to exceed the total of the salaries of the combined positions."

And following this, Section 204 provides:

"When a new political division affecting the territorial jurisdiction of a justice of the peace is formed or the boundaries limiting the same are changed, the Governor-General, may, in the absence of special provision, designate which of the justices and auxiliary justices within the territory affected by the change shall continue in office; and the powers of any others therein shall cease."

It is to be observed that the Legislature of the Philippines made legislative provision for as close observation of the conduct of justices of the peace as is practicable. They are not like justices of the peace in this country, generally elected by the people. They are selected by the Governor-General and occupy positions of considerable power in these local communities and exercise a control in the remote districts that makes it of the highest importance that they should be closely under the discipline of the chief executive. They are judicial officers, it is true, but these provisions indicate how

marked a difference there is and must be between the justices of the peace under our system and that of the Philippines. With respect to this matter we may take judicial notice that while the justices of the peace are to be treated as an important force for the preservation of local order and the administration of police court justice, they are subject to restraint by the Governor-General to prevent the abuses of their offices by the ease with which such local official authority lends itself in the Islands to the creation of caciques or local bosses exercising oppressive control over ignorant neighborhoods. This is the reason why their conduct is not only to be closely inquired into by the courts of first instance, but also why the Governor-General is given absolute power of removal or suspension and the enlargement or restriction of their districts by merging them, and now in this last amendment, by rearranging their jurisdictions by transfer in the public interest.

The objection now is made that while through the Governor-General the districts under existing justices of the peace may be merged, combined, increased or decreased, an existing justice of the peace may not be transferred from one district to another, unless there is a new appointment of a justice with a new consent by the Senate.

This brings us to a consideration of the proper construction of the proviso of Section 206 here in question. This proviso was the result of an amendment by Section 1 of Act No. 2768 in February, 1918. The original bill was Senate Bill No. 163, providing that Section 206 of the Administrative Code be amended by adding the proviso, "that a justice of the peace of one municipality may be transferred to another when the government deems it wise." An amendment was offered in the Philippine Senate adding thereto the words, "provided further that his appointment by virtue of the transfer be confirmed by the Senate." With this amendment the bill passed the Senate. When the bill came to the House, the House Committee recommended that the amendment made in the Senate be dropped. It so passed the House and was then on February 8, 1918, submitted to the Senate, and the amendment of the House was accepted. A purpose on the part of the Legislature to eliminate from such a transfer the consent of the Senate could hardly be more clearly established.

The majority of the Supreme Court seems to think otherwise. It is sufficient to say that its suggested implication that the consent of the Senate was to be retained, although express provision

for it was expressly stricken out, is not convincing. Nor is the significance attached by the majority of the Supreme Court to the silence of the proviso as to the person intended to make the transfer at all impressive. Nor will the suggestion that the Philippine Senate alone might be intended to make the transfer suffice. The history of the legislation as well as the general trend of it with reference to the powers of the Governor-General in the discipline of justices of the peace, their suspension, their removal, the current extension of their jurisdiction by him pending their incumbency, all are convincing that, however invalid the exclusion of the Senate from the consent to the transfer, the purpose of the Legislature was certainly intended to effect that very result.

This brings us therefore to the final issue—whether the consent was necessary to the transfer, even though the Senate and the House, acting together as the Legislature, eliminated it by the proviso. It is to be borne in mind that we are dealing with the Philippine Legislature which has full power to make legislative provision for the appointment of justices of the peace, to provide for their duties, for the payment of their salaries, for their removal, their suspension, their jurisdiction and the changes in their jurisdiction, and to vest in the Governor-General, as the executive, the exercise of the powers it thus creates or indeed to abolish justices of the peace and substitute some other system. To take a possible example. Suppose that the Philippine Legislature had created the office of justice of the peace, had provided that the Governor-General should appoint forty justices of the peace for certain described districts in the Philippines, and had directed that the Governor-General should designate for them their districts but that he might change the designation originally fixed by him for their distribution as the public benefit required. It seems to us clear that this would be quite within the power of the Legislature and that the Senate by consenting to the appointment of each appointee would be held legally to have confirmed his appointment not only to act as justice of the peace under his first designation but would have given him the right to continue to exercise his powers conferred by law in any other district to which he might be transferred, because the Senate would have had full notice as to the powers which he could enjoy and must be held to have consented to his exercise of those broader powers without further consideration and revision. This is the same case. When the Senate confirmed Severino Alberto to be a justice of the peace for San Juan del

Monte, Section 206, with the proviso, was in force; and when the Senate confirmed him it confirmed him with the knowledge of the possibility declared in the law that his powers and his functions as a justice of the peace upon designation of the Governor-General might be performed and exercised in another jurisdiction, if the Governor-General should think it wise in the public interest in his regulation of the conduct of justices of the peace. There is no such necessary difference between the duties of a justice of the peace in one part of the Islands and those to be performed in another part as to make such enlargement or change of his jurisdiction already provided for in existing law unreasonably beyond the scope of the consent to the original appointment. Such an extension of his duties is of the same kind as those provided before the proviso was enacted in respect to the merging of districts, their enlargement, or their combination by uniting one district with another under the existing justice of the peace. See *Shoemaker* v. *United States*, 147 U. S. 282, 301; *Southern Pacific Co.* v. *Bartine*, 170 Fed. 725, 748.

It is constantly to be borne in mind that this whole subject matter in respect to the institution of justices of the peace as part of the government structure in the Philippines is wholly within the control of the Legislature. If what they provide results in greater control by the Governor-General than is wise, the Legislature may repeal the provisions tomorrow and substitute some other limitations.

Some general observations were made by the Supreme Court with reference to the necessity of maintaining the independence of the judiciary and expressions of opinion that this independence should be preserved strictly as it should be with respect to judges of superior court jurisdiction. It has always been recognized that justices of the peace, even in our system, are of less importance in the judiciary and must be made to conform to greater regulation than the judges of higher courts. *Capital Traction Co.* v. *Hof*, 174 U. S. 1, 17, 38. Justices of the peace are judicial officers, it is true, but they are much to be differentiated from judges of the courts of record. We do not think, therefore, that the case of *Borromeo* v. *Mariano*, 41 Phil. 322, with reference to the transfer and removal of a judge of the court of first instance, has application here.

The judgment is reversed.